



Discovery Deposition of **Doug Blankenship**

Date: August 31, 2023

Case: Joseph Lucas v. Blankenship Construction Co.,; Doug Blankenship; and Nathan Marlen

No. 3:23-cv-00056-SMY

Court Reporter: Ann Marie Hollo, CSR, RDR, CRR

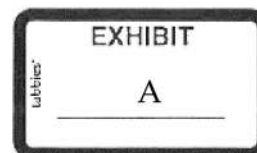
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

JOSEPH LUCAS,

)

)

Plaintiff,

)

)

vs.

) Case No. 3:23-cv-00056-SMY

)

BLANKENSHIP CONSTRUCTION CO.;

)

DOUG BLANKENSHIP; and

)

NATHAN MARLEN,

)

)

Defendants.

)

DISCOVERY DEPOSITION OF DOUG BLANKENSHIP

TAKEN ON BEHALF OF THE PLAINTIFF

AUGUST 31, 2023

Ann Marie Hollo, CSR, RDR, CRR

Doug Blankenship
August 31, 2023

Page 2		Page 4	
1	QUESTIONS BY: PAGE	1	APPEARANCES
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8	EXHIBIT PAGE	8	St. Louis, Missouri 63102
9	Exhibit 1 22	9	(314) 889-8000
10	Exhibit 2 28	10	bstonge@polsinelli.com
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12	Exhibit 4 43	12	For the Defendants Blankenship
13	Exhibit 5 49	13	Construction Company and Doug
14	Exhibit 6 55	14	Blankenship:
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16	Exhibit 8 104	16	SILVER LAKE GROUP, LTD.
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			ALSO PRESENT: Joseph Lucas, Nathan Marlen
			The Court Reporter: Ann Marie Hollo, CSR, RDR, CRR
Page 3		Page 5	
1	UNITED STATES DISTRICT COURT	1	IT IS HEREBY STIPULATED AND AGREED, by and
2	SOUTHERN DISTRICT OF ILLINOIS	2	between counsel for Plaintiff and counsel for
3	JOSEPH LUCAS,)	3	Defendants that the deposition may be taken in
4	Plaintiff,)	4	shorthand by Ann Marie Hollo, RDR/CRR, a Certified
5	vs.) Case No. 3:23-cv-00056-SMY	5	Shorthand Reporter, and afterwards transcribed into
6	BLANKENSHIP CONSTRUCTION CO.;)	6	typewriting; and the signature of the witness is
7	DOUG BLANKENSHIP; and)	7	expressly waived.
8	NATHAN MARLEN,)	8	*****
9	Defendants.)	9	DOUG BLANKENSHIP,
10	DEPOSITION OF DOUG BLANKENSHIP,	10	of lawful age, being produced, sworn, and examined
11	produced, sworn, and examined on AUGUST 31, 2023,	11	on behalf of the Plaintiff, deposes and says:
12	between the hours of ten minutes after nine o'clock	12	(Starting time of the deposition is: 9:10 a.m.)
13	in the forenoon and fifty minutes after one o'clock	13	DIRECT EXAMINATION
14	in the afternoon of that day, at the office of Brown	14	BY MR. ST. ONGE
15	& James, P.C., 525 West Main Street, Suite 200,	15	Q. Would you please state your name for the
16	Belleville, Illinois, before Ann Marie Hollo, CSR,	16	record.
17	RDR, CRR, in a certain cause now pending in the	17	A. Doug Blankenship.
18	UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF	18	Q. Do you have a middle name, Doug?
19	ILLINOIS, wherein JOSEPH LUCAS is the Plaintiff, and	19	A. Allen, A-L-L-E-N.
20	BLANKENSHIP CONSTRUCTION CO.; DOUG BLANKENSHIP; and	20	Q. We've not met before. We met just briefly
21	NATHAN MARLEN are the Defendants.	21	out in the hallway, just shook hands. I represent
22		22	Joe Lucas here in this lawsuit regarding his
23		23	property in Fayette County, Illinois. It's my
24		24	opportunity today to ask you questions about what

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<p>1 you know about the subject matter of this case.</p> <p>2 Have you had your deposition taken before</p> <p>3 in any matter?</p> <p>4 A. It's been a long time ago, yes, but, yes.</p> <p>5 Q. And a long time ago -- ballpark it for me.</p> <p>6 A. Ten years.</p> <p>7 Q. Was it a case that you were personally</p> <p>8 involved in?</p> <p>9 A. No. It was a class action.</p> <p>10 Q. Okay. You had your depo taken in a class</p> <p>11 action?</p> <p>12 A. It was a -- I guess it would be, yes. It</p> <p>13 was a class action lawsuit over some Syngenta grain</p> <p>14 marketing.</p> <p>15 Q. Were you the named plaintiff?</p> <p>16 A. I was a plaintiff, yes, in a class action</p> <p>17 against Syngenta.</p> <p>18 Q. Okay. And what happened to that case?</p> <p>19 Did it settle, go to trial?</p> <p>20 A. I believe it settled.</p> <p>21 Q. Okay. Okay. So it's been a little while</p> <p>22 since you had your depo. So let's go over a couple</p> <p>23 of ground rules today.</p> <p>24 So we have a court reporter here taking</p>	<p>1 Q. If you think of something later today in</p> <p>2 response to a question I had earlier, will you let</p> <p>3 me know?</p> <p>4 A. Mm-hmm, sure will.</p> <p>5 Q. And I don't know if we'll be here too</p> <p>6 terribly long, but anytime you want to take a break,</p> <p>7 just let me know. I just ask if I have a question</p> <p>8 pending, please answer the question before we take a</p> <p>9 break.</p> <p>10 A. Sure.</p> <p>11 Q. Are you on any medications today that</p> <p>12 would affect your memory?</p> <p>13 A. No.</p> <p>14 Q. Any reason you can think of why you would</p> <p>15 not be able to give your best testimony today?</p> <p>16 A. No.</p> <p>17 Q. Did you prepare for your depo today?</p> <p>18 A. Not really.</p> <p>19 Q. Did you meet with your lawyer?</p> <p>20 A. No.</p> <p>21 Q. Are you being represented today by a</p> <p>22 lawyer?</p> <p>23 A. Yes.</p> <p>24 Q. Sitting next to you?</p>
Page 7	Page 9
<p>1 down everything that both of us say, so we've got to</p> <p>2 make sure we don't speak over one another. So</p> <p>3 please let me finish my question before you give an</p> <p>4 answer, and I'll do the same before I ask another</p> <p>5 question; fair?</p> <p>6 A. Mm-hmm, yes.</p> <p>7 Q. And as you've been doing, you've been</p> <p>8 answering nonverbally. We've got to make sure we</p> <p>9 give verbal answers: "Yes," "no," whatever the case</p> <p>10 may be, rather than nods of the head, shakes of the</p> <p>11 head, "uh-uhs" and "huh-uhs." Is that fair?</p> <p>12 A. Understand.</p> <p>13 Q. All right. If you don't hear a question,</p> <p>14 please let me know. Is that right?</p> <p>15 A. Sure.</p> <p>16 Q. Okay. Because if you give an answer and</p> <p>17 you didn't understand, I'm going to assume you</p> <p>18 understood it.</p> <p>19 A. Okay.</p> <p>20 Q. Lawyers today may make some objections in</p> <p>21 response to questions, but whatever the objection</p> <p>22 is, unless they tell you not to answer, you've got</p> <p>23 to give the answer to the question. Is that right?</p> <p>24 A. Yes.</p>	<p>1 A. Yeah.</p> <p>2 Q. So you didn't speak with your lawyer. Did</p> <p>3 you review any documents?</p> <p>4 A. Well, we didn't meet. We spoke on the</p> <p>5 phone.</p> <p>6 Q. Okay. How long did you speak on the</p> <p>7 phone?</p> <p>8 A. Five minutes.</p> <p>9 Q. Did you speak to anybody else about</p> <p>10 today's deposition?</p> <p>11 A. No.</p> <p>12 Q. Did you speak to Nate Marlen?</p> <p>13 A. No.</p> <p>14 Q. Did you review any documents to prepare</p> <p>15 for today?</p> <p>16 A. No.</p> <p>17 Q. Did you speak with anybody -- any</p> <p>18 employees at Blankenship Construction about today?</p> <p>19 A. No.</p> <p>20 Q. Did you review any text messages or emails</p> <p>21 with anybody to prepare for today?</p> <p>22 A. No.</p> <p>23 Q. Did you review any of the papers that you</p> <p>24 have filed in this case to prepare for your depo</p>

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<p style="text-align: right;">Page 10</p> <p>1 today?</p> <p>2 A. What was emailed, provided through your</p> <p>3 guys' firm and my attorney. I read the emails.</p> <p>4 Q. Okay. And which emails were those?</p> <p>5 A. Those was the questions that was asked to</p> <p>6 all of us and responses.</p> <p>7 Q. All right. The interrogatories?</p> <p>8 A. Yeah.</p> <p>9 Q. Okay. Did you review any of Nate Marlen's</p> <p>10 answers to interrogatories or his answer in the</p> <p>11 complaint today -- to prepare for today?</p> <p>12 A. Briefly, yes.</p> <p>13 Q. To prepare for today?</p> <p>14 A. Not really to prepare. I just read them.</p> <p>15 Q. You have read them in the past?</p> <p>16 A. I have read them.</p> <p>17 Q. All right. Let's talk basically about</p> <p>18 background. What's the highest level of education</p> <p>19 that you've got?</p> <p>20 A. I graduated high school and went to two</p> <p>21 years of college.</p> <p>22 Q. Okay. When did you stop -- did you go</p> <p>23 straight into college?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Construction, a family business.</p> <p>2 Q. When did that start then?</p> <p>3 A. Roughly around '96, I believe.</p> <p>4 Q. Had you worked in the family business</p> <p>5 before?</p> <p>6 A. Not as an employee, no.</p> <p>7 Q. Okay.</p> <p>8 A. A family business, you know, Sundays, and</p> <p>9 you was expected to do things.</p> <p>10 Q. Understood.</p> <p>11 Okay. So you went to work formally for</p> <p>12 them then full time in '96?</p> <p>13 A. Yes.</p> <p>14 Q. And what did you start doing in 1996?</p> <p>15 A. As an operator, equipment operator.</p> <p>16 Q. What kind of equipment?</p> <p>17 A. Earthmoving excavation equipment.</p> <p>18 Q. Backhoes, dozers?</p> <p>19 A. Yeah, mm-hmm.</p> <p>20 Q. Did you need some sort of certification to</p> <p>21 run those?</p> <p>22 A. Got trained by the best, my father.</p> <p>23 That's good enough. I am also a member of Local 520</p> <p>24 Operating Engineers.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. When did you stop going?</p> <p>2 A. 1987, I graduated high school, and it</p> <p>3 would have been probably somewhere around '89 I</p> <p>4 stopped going to college.</p> <p>5 Q. Okay. Did you get an associate's degree</p> <p>6 or any degree from college?</p> <p>7 A. No, didn't finish.</p> <p>8 Q. What did you study?</p> <p>9 A. Construction management.</p> <p>10 Q. Where was that?</p> <p>11 A. It was Belleville Area College. Now it's</p> <p>12 Southwest area college (sic).</p> <p>13 Q. And when you stopped going to college,</p> <p>14 what did you start doing then?</p> <p>15 A. I went to -- well, had employment with</p> <p>16 Speed Lube, a quick oil change company.</p> <p>17 Q. Okay. And how long did you work at Speed</p> <p>18 Lube?</p> <p>19 A. Five years.</p> <p>20 Q. As a tech changing oil?</p> <p>21 A. Starting out as a tech and then to</p> <p>22 management.</p> <p>23 Q. Okay. What did you do after Speed Lube?</p> <p>24 A. I went back to work for Blankenship</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Got it.</p> <p>2 So you've been working as an operator</p> <p>3 since '96?</p> <p>4 A. Worked as an operator up -- as a</p> <p>5 superintendent underneath my dad's tutelage up until</p> <p>6 2004 when he passed away with cancer. At that</p> <p>7 point, I assumed the role of manager of Blankenship</p> <p>8 Construction.</p> <p>9 Q. Are you also a vice president of</p> <p>10 Blankenship Construction?</p> <p>11 A. Correct.</p> <p>12 Q. And what would you consider your title to</p> <p>13 be currently?</p> <p>14 A. Vice president.</p> <p>15 Q. VP?</p> <p>16 And when did you become a superintendent?</p> <p>17 You did that until 2004, but when did you start?</p> <p>18 A. I would say probably employment of</p> <p>19 Blankenship Construction would be '96.</p> <p>20 Q. Okay. So you were superintendent when you</p> <p>21 started?</p> <p>22 A. Right.</p> <p>23 Q. Is that -- your first real experience</p> <p>24 doing superintendent work, was that Blankenship</p>

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<p style="text-align: right;">Page 14</p> <p>1 Construction?</p> <p>2 A. Mm-hmm.</p> <p>3 Q. What do you do as a superintendent?</p> <p>4 A. You manage job sites.</p> <p>5 Q. And what kind of jobs were these,</p> <p>6 generally speaking?</p> <p>7 A. They was --</p> <p>8 Q. Earthmoving?</p> <p>9 A. Earthmoving, filling ponds. We ventured</p> <p>10 into moving -- moving dirt for landfill companies,</p> <p>11 building landfills. We progressed on to several</p> <p>12 different aspects of excavation, construction work.</p> <p>13 Q. How big are these teams that you're</p> <p>14 managing on average?</p> <p>15 A. They could be anywhere from 3 guys on up</p> <p>16 to 50, 60, depending on a job.</p> <p>17 Q. And when you were superintendent, did you</p> <p>18 also operate the equipment on these job sites?</p> <p>19 A. Sometimes.</p> <p>20 Q. Would you say the majority of your time</p> <p>21 was operating the equipment or managing?</p> <p>22 A. I'd say it's split 50-50.</p> <p>23 Q. How about farming, are any of these jobs</p> <p>24 that Blankenship Construction does farm jobs?</p>	<p style="text-align: right;">Page 16</p> <p>1 Construction --</p> <p>2 A. Typically it's -- whenever I'm operating a</p> <p>3 piece of equipment, it's on my own personal property</p> <p>4 whenever I get to borrow a piece of equipment and do</p> <p>5 some projects with my own.</p> <p>6 Q. Okay. So you're not operating for</p> <p>7 Blankenship at this point at all? All of the work</p> <p>8 that you're doing --</p> <p>9 A. No. I'm pretty much managing the company.</p> <p>10 Q. And that's been the case that you only</p> <p>11 operate on your personal property since around 2004?</p> <p>12 A. I mean, yeah.</p> <p>13 Q. More or less?</p> <p>14 A. There's been times that I have went out on</p> <p>15 job sites when I'm needing to cover for a guy or</p> <p>16 something and got on a machine.</p> <p>17 Q. Okay. Are you a part owner of Blankenship</p> <p>18 Construction Company?</p> <p>19 A. Yes.</p> <p>20 Q. How much do you own percentage wise?</p> <p>21 A. I want to say it's like 33 1/3 percent.</p> <p>22 Q. Who are the other owners?</p> <p>23 A. My mother, Suzanna Renee Blankenship.</p> <p>24 Q. How much does she own?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Mm-hmm.</p> <p>2 Q. Including building ponds on farms?</p> <p>3 A. Yes.</p> <p>4 Q. Do you still operate the equipment?</p> <p>5 A. Yes.</p> <p>6 Q. Do you still operate equipment today?</p> <p>7 A. Not very much. I like to do it more</p> <p>8 often, but I don't have a chance.</p> <p>9 Q. And when did you kind of move out of that</p> <p>10 role?</p> <p>11 A. Probably about 2004.</p> <p>12 Q. And now it's more monitoring the work</p> <p>13 others are doing?</p> <p>14 A. Correct, yes.</p> <p>15 Q. So when your father passed is kind of</p> <p>16 where that transition started?</p> <p>17 A. Yes.</p> <p>18 Q. How often do you operate them now?</p> <p>19 A. Not very often.</p> <p>20 Q. Once a year maybe?</p> <p>21 A. I'm going to say maybe a half a dozen</p> <p>22 times a year, six times a year.</p> <p>23 Q. And under what circumstances are you the</p> <p>24 one doing the operating versus other Blankenship</p>	<p style="text-align: right;">Page 17</p> <p>1 A. She owns the remainder.</p> <p>2 Q. 66 2/3rds?</p> <p>3 A. Yes.</p> <p>4 Q. So it's you and your mom?</p> <p>5 A. I'm not exactly sure of that percentage of</p> <p>6 ownership because there was 25 percent that was my</p> <p>7 sister's, and when my father passed away, we</p> <p>8 purchased that off of my sister. That went into the</p> <p>9 stocks. So how that mixes up, I'm not really sure</p> <p>10 on numbers.</p> <p>11 Q. So currently are there any other owners</p> <p>12 apart from you and your mother?</p> <p>13 A. No.</p> <p>14 Q. You know you own 33 percent?</p> <p>15 A. Yes.</p> <p>16 Q. What is Triangle Grain Incorporated?</p> <p>17 A. Triangle Grain Incorporated is a farm</p> <p>18 corporation.</p> <p>19 Q. Who owns that?</p> <p>20 A. My mother and myself.</p> <p>21 Q. And what percentages?</p> <p>22 A. The same percentages of Blankenship</p> <p>23 Construction.</p> <p>24 Q. What is -- what does it do?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. It's a farming corporation. They farm 2 ground. 3 Q. Does it own its own property, own 4 farmland? 5 A. No. Triangle does not own any farmland. 6 Q. It operates farms for others? 7 A. Correct. 8 Q. Where? 9 A. Bond County, Fayette County, Montgomery 10 County. 11 Q. Does it farm property that's owned by 12 Nathan Marlen or his trust? 13 A. Yes. 14 Q. How many acres? 15 A. Approximately 530. 16 Q. Where is that located? Is it all one 17 contiguous lot, or is it broken up? 18 A. Yeah, it's one contiguous piece of land in 19 Fayette County. 20 Q. Is that property -- that's the north of 21 Joe Lucas's property? 22 A. Correct. 23 Q. Are there other customers or other 24 people's farmland that Triangle Grain farms, or is</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes. 2 Q. And how long does that lease last? 3 A. I believe right now we have a five-year 4 lease. We're into the first year this year. 5 Q. What kind of crops do you farm on that 6 property? 7 A. Corn and soybeans. 8 Q. Did you have a harvest last year? 9 A. Yes. 10 Q. Okay. Was that profitable? 11 A. Are you talking about in general the whole 12 entire farm corporation or just on Nate Marlen's? 13 Q. On Nate Marlen's. 14 A. On Nate Marlen's, there was a loss. 15 Q. Whose idea was it to start farming on his 16 property? Did you approach him; did he approach 17 you? 18 A. We -- actually, Nate contacted me, and we 19 discussed it. And then we -- from there, we -- I 20 started talking to his father, and it progressed 21 from there to having meetings, sat down, and, I 22 think, worked out a deal. 23 Q. What is the arrangement for payment for 24 that lease?</p>
<p style="text-align: right;">Page 19</p> <p>1 it just Nate Marlen's? 2 A. No. There's others. 3 Q. What percentage of the work would you say 4 is Nate Marlen's in terms of maybe acreage? 5 A. Probably somewhere -- I'm going 6 to -- a rough guess, a third of my acres. 7 Q. Is done for Nate Marlen? 8 A. Yes. 9 Q. Do you have -- how long have you 10 been -- how long have you been doing that for Nate 11 Marlen? 12 A. Since 2021, I believe. 13 Q. What part of 2021? 14 A. Excuse me? 15 Q. What part? Like, when did -- what month 16 did it begin? 17 A. It began in the spring, starting in, like, 18 January 1. The lease is usually stated January 1. 19 Q. So you have a written lease with Marlen? 20 A. Yes. 21 Q. Or trust, I mean? Do you know who it was 22 with or with him or his trust? Do you know? 23 A. It's with the trust right now. 24 Q. Did you negotiate that -- that lease?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Cash rent. 2 Q. You pay him cash, and you get to keep 3 whatever -- whatever is made on the property? 4 A. That's correct. 5 Q. And how much do you pay per year? 6 A. Oh, I'm not exactly sure the numbers on 7 that as far as per acre cash rent. I am wanting to 8 say it's somewhere around 240 an acre. 9 Q. Per year? 10 A. 240 an acre per year, correct. 11 Q. So Nate contacted you about that. What 12 made you interested in doing that? 13 A. Actually, it was first -- it was Nate. 14 When we met, he said the farm was in bad -- bad 15 shape as far as drainage. He wanted to know about 16 me coming up and taking a look to see what we could 17 possibly do to get drainage work going on there 18 because it had been let go for many years. 19 So then once we got up there and we got to 20 looking at it, we got to talking about farming. 21 He said, "Well, maybe we can work out an 22 arrangement to where if we can get you in here to 23 start some drainage to get some of this water off of 24 the fields, then talk to me about farming it."</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 So we worked out a deal, and that's how it 2 all started. 3 (Exhibit 1 was marked for identification.) 4 BY MR. ST. ONGE 5 Q. So I'm showing you what we've marked as 6 Exhibit 1. 7 Do you recognize this document? It's 8 called, "Blankenship Construction Company and Doug 9 Blankenship's Combined Response to Plaintiff Joe 10 Lucas's Request to Produce." 11 A. Yes. 12 Q. And then that's your signature on the last 13 page there? 14 A. Yes. 15 Q. Okay. So if we turn to number 9, which is 16 on Page 3, your answer there says that Marlen and 17 Defendants. Do you see where I am on the second 18 line? 19 A. [Deponent indicated.] 20 Q. "Marlen and Defendants did, in fact, come 21 to an agreement that in exchange for drainage work 22 done on for Marlen, hat Triangle Grain, which is the 23 farming entity for which Doug Blankenship has an 24 owner interest in, would receive a reduced rental</p>	<p style="text-align: right;">Page 24</p> <p>1 phone going off? 2 (Whereupon there was a short discussion 3 off the record.) 4 BY MR. ST. ONGE 5 Q. We were talking about the discount and how 6 it was arranged and how that came up. 7 A. So whenever the agreed -- or the lease 8 came back up for renegotiation, we had discussed 9 prior to that whenever that next lease came up that 10 we would work out the ditching work into that 11 agreement. They was wanting X, and I kind of 12 figured out, well, here's where we were at as far as 13 our cost. Can we subtract that and come up with our 14 new lease agreement rate? 15 Q. Okay. You said there was a renegotiation. 16 So you were in a lease with him before this? 17 A. I believe it was on a one-year lease, 18 yeah. 19 Q. So when did the -- when did the one-year 20 lease start? 21 A. I'm -- like I said, I thought that was 22 '21. 23 Q. That was the first time? 24 A. I believe so, yes.</p>
<p style="text-align: right;">Page 23</p> <p>1 rate on the farm tenancy between Marlen and Triangle 2 Grain." 3 A. Mm-hmm. 4 Q. Okay. So that's what we've been talking 5 about, the same land, correct? 6 A. Yes. 7 Q. You've got to answer verbally my -- 8 A. Yes, yes. 9 Q. So you said that you received a reduced 10 rental rate. Do you know what reduction was off of 11 what it normally would have been? 12 A. I'm wanting to say it was going to be 13 somewhere around \$50 an acre reduction. I'm not 14 exactly sure on that, but somewhere around that 15 neighborhood. 16 Q. Did you tell him that "I don't want to pay 17 the market rate on this because of the drainage 18 issues"? Or who brought up the discount? 19 A. The discount was brought up by myself 20 because we had a contract negotiation or a lease 21 agreement negotiation and in discussing that lease 22 agreement -- 23 (Brief interruption.) 24 MR. ST. ONGE: Is there somebody's</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Okay. And you had a one-year lease? 2 A. Right. 3 Q. Okay. And that was at the standard rate, 4 and you wanted to bump that down? 5 A. No. That was at the -- well, that was at 6 the rate we set that one-year lease, and then when 7 we come back to renegotiate the next one, they was 8 wanting more per acre, and we had some work that was 9 done, which was discussed prior. So we ended up 10 deciding on this amount here for the next five 11 years. I wanted a longer term so that I could work 12 out some of the costs that I incurred on doing the 13 drainage work. 14 Q. Okay. So when you first saw this 15 property, Nate told you that it didn't drain very 16 well? 17 A. Correct. 18 Q. Did you go out there and look at it? 19 A. Correct. I did. 20 Q. With Nate? 21 A. Yes. 22 Q. And did you discuss with him what the 23 drainage issue might be and how you could resolve 24 that?</p>

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<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. And what did you guys -- what did you tell</p> <p>3 him?</p> <p>4 A. That we needed to get in here, and we</p> <p>5 needed to start opening up the main-artery ditches</p> <p>6 to get water flowing so it will come out of the</p> <p>7 field, so we won't have drainage issues in the</p> <p>8 fields.</p> <p>9 Q. Okay. And at that point, did you go onto</p> <p>10 Joe Lucas's property to look at one of the arteries</p> <p>11 that you're mentioning?</p> <p>12 A. We looked at all of it, not necessarily</p> <p>13 Joe Lucas's property. We looked at Nate Marlen's</p> <p>14 property.</p> <p>15 Q. Did it include Joe Lucas's property?</p> <p>16 A. At that point in time, I don't -- I can't</p> <p>17 remember.</p> <p>18 Q. So when you first saw it, he wasn't</p> <p>19 willing to agree to a reduced rate on the drainage</p> <p>20 issue? I'm trying to understand. You said you had</p> <p>21 a one-year deal at a standard rate.</p> <p>22 A. We had a one-year deal, a standard rate.</p> <p>23 Q. And what was that rate?</p> <p>24 A. I'm wanting to say that was --</p>	<p style="text-align: right;">Page 28</p> <p>1 area?</p> <p>2 A. Correct.</p> <p>3 Q. And you don't know whether or not that</p> <p>4 included Joe Lucas?</p> <p>5 A. We didn't walk every ditch. This</p> <p>6 is -- we're talking about this was pretty extensive</p> <p>7 drainage work. So it was kind of ongoing. We</p> <p>8 didn't get this all done in one day. This was over</p> <p>9 a matter of a year, year and a half.</p> <p>10 Q. Was the whole field under water?</p> <p>11 A. Yeah. There was issues with the drainage,</p> <p>12 and they couldn't keep the crop on the field.</p> <p>13 Q. And did he tell you how long that had been</p> <p>14 the case?</p> <p>15 A. Several years.</p> <p>16 Q. He told you that?</p> <p>17 A. Yeah.</p> <p>18 Q. I got further than I wanted with you on</p> <p>19 that, so let's back up a little bit.</p> <p>20 MR. ST. ONGE: So let's go to the</p> <p>21 next one.</p> <p>22 (Exhibit 2 was marked for identification.)</p> <p>23 BY MR. ST. ONGE</p> <p>24 Q. So you're here today for your deposition.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. You said it was 240 under the reduced</p> <p>2 rate?</p> <p>3 A. I want to say it was like one -- \$200 an</p> <p>4 acre, I believe, or 205, somewhere in that</p> <p>5 neighborhood.</p> <p>6 Q. Well, when was it at 240?</p> <p>7 A. That's currently now. The 240 is</p> <p>8 currently now, in the lease we're into now.</p> <p>9 Q. So the price went up?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. So originally it was 205?</p> <p>12 A. 205. I am wanting to say 205, 210,</p> <p>13 somewhere. I'm not exactly sure on my numbers.</p> <p>14 Q. And that was a reduced rate under your</p> <p>15 understanding?</p> <p>16 A. Not then, no. That was the standard</p> <p>17 rate --</p> <p>18 Q. Okay.</p> <p>19 A. -- before we ever even got started doing</p> <p>20 any ditch work or anything like that.</p> <p>21 Q. And you were on that property. He said,</p> <p>22 "Here's the drainage issues." You walked with him?</p> <p>23 A. Right.</p> <p>24 Q. You checked out these ditches around the</p>	<p style="text-align: right;">Page 29</p> <p>1 Have you seen this document before? It lists the</p> <p>2 witness. This is an amended deposition notice for</p> <p>3 today. It lists you personally as the deponent on</p> <p>4 the first page. Do you see that? Have you seen</p> <p>5 this before?</p> <p>6 A. I believe so.</p> <p>7 Q. Okay. So you understand that you're here</p> <p>8 today in your individual, personal capacity because</p> <p>9 you've got information personally about this case.</p> <p>10 Do you understand that?</p> <p>11 A. Yes.</p> <p>12 (Exhibit 3 was marked for identification.)</p> <p>13 BY MR. ST. ONGE</p> <p>14 Q. Okay. And then I'll show you what I've</p> <p>15 marked as Exhibit 3. You've seen this document</p> <p>16 before. This is an amended notice of deposition,</p> <p>17 and it lists the witness, Blankenship Construction</p> <p>18 Company. Have you seen this second depo notice</p> <p>19 before?</p> <p>20 A. Yes.</p> <p>21 Q. All right. So you understand that -- I'm</p> <p>22 sure your lawyer explained it to you, but you are</p> <p>23 aware that you're here also as a representative of</p> <p>24 Blankenship Construction Company to offer testimony</p>

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<p style="text-align: right;">Page 30</p> <p>1 that it has collectively?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if you turn to the second page,</p> <p>4 you see under matters of examination, you've read</p> <p>5 through these topics before; is that right?</p> <p>6 A. Briefly, yes.</p> <p>7 Q. Okay. And you understand that you're here</p> <p>8 to testify on all of these topics?</p> <p>9 A. Yes.</p> <p>10 Q. There's nobody else that's going to be</p> <p>11 testifying on these topics for Blankenship</p> <p>12 Construction; is that correct?</p> <p>13 A. No.</p> <p>14 Q. Is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. So are you prepared today to testify on</p> <p>17 all of these topics for Blankenship Construction</p> <p>18 Company?</p> <p>19 A. Yes.</p> <p>20 Q. And what did you do to prepare to get</p> <p>21 ready to testify on all these topics?</p> <p>22 A. I -- basically I know what happened on the</p> <p>23 farm, so I have a memory of it. That's how I</p> <p>24 prepared.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. That's right.</p> <p>2 Q. All right. Let's talk just a little bit</p> <p>3 about Blankenship Construction Company.</p> <p>4 When was that company started?</p> <p>5 A. 1968.</p> <p>6 Q. Started by your father?</p> <p>7 A. Mm-hmm, yes.</p> <p>8 Q. And your mother?</p> <p>9 A. Yes.</p> <p>10 Q. What were its revenues in 2022?</p> <p>11 A. I don't recall that.</p> <p>12 Q. Do you know what they were in 2021?</p> <p>13 A. I don't recall that either.</p> <p>14 Q. 2020?</p> <p>15 A. I don't recall that.</p> <p>16 Q. Ballpark?</p> <p>17 A. It varies from year to year.</p> <p>18 Q. So --</p> <p>19 A. Blankenship Construction is not only a</p> <p>20 private land company; we also operate on a</p> <p>21 commercial level.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. Commercial being it would be on</p> <p>24 the -- commercial side would be for larger</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. You didn't speak with anybody else at</p> <p>2 Blankenship Construction Company --</p> <p>3 A. No.</p> <p>4 Q. -- about these topics --</p> <p>5 A. No.</p> <p>6 Q. -- to get their information or anything</p> <p>7 like that?</p> <p>8 A. No.</p> <p>9 Q. Did you talk with Barry Matthews?</p> <p>10 A. Barry Matthews is an employee of</p> <p>11 Blankenship Construction and Triangle Grain, and we</p> <p>12 have talked -- the only time I've talked to Barry</p> <p>13 about this issue is whenever we went down and put</p> <p>14 the tube in for Joe on his property.</p> <p>15 Q. You didn't talk with him about any of</p> <p>16 these topics?</p> <p>17 A. No.</p> <p>18 Q. So all of the information --</p> <p>19 A. I don't discuss that with my employees.</p> <p>20 Q. So all of the information that Blankenship</p> <p>21 Construction Company has on these topics is going to</p> <p>22 come from you today?</p> <p>23 A. That's right.</p> <p>24 Q. Based on your personal knowledge?</p>	<p style="text-align: right;">Page 33</p> <p>1 companies. So I kind of have -- the company does</p> <p>2 two different aspects. There's a commercial side</p> <p>3 for larger companies, and then there's what I call</p> <p>4 "the private side," which will be for</p> <p>5 farm -- farmers.</p> <p>6 Q. Individuals as opposed to corporations?</p> <p>7 A. Because there's a different set of rules</p> <p>8 with the employees. We are a union-based company on</p> <p>9 the commercial side. We're a nonunion company on</p> <p>10 the agricultural side, private side.</p> <p>11 Q. Okay. And what percentage is the</p> <p>12 personal, individual, versus the commercial? What's</p> <p>13 the ratio of revenue between those two?</p> <p>14 A. Oh, the revenue? Probably somewhere in</p> <p>15 the neighborhood of 10 percent would be the private.</p> <p>16 Q. 90 percent is done for commercial --</p> <p>17 A. Correct.</p> <p>18 Q. -- companies? Okay.</p> <p>19 Commercial work?</p> <p>20 A. Correct.</p> <p>21 Q. Is that all farmland?</p> <p>22 A. Excuse me?</p> <p>23 Q. All farmland, commercial farmland, or is</p> <p>24 it outside?</p>

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<p style="text-align: right;">Page 34</p> <p>1 A. On the agricultural side? 2 Q. Okay. So you've got an agricultural side? 3 A. Agricultural, personal property side, 4 which will be anything done on the agricultural side 5 as far as for farmers, this, that, and the other. 6 We might go build a pond for a private individual 7 that doesn't have any farm ground. We may dig a 8 basement for somebody. 9 Q. I see. 10 A. It's just -- 11 Q. And the commercial side, is any of that 12 agricultural? 13 A. No. 14 Q. I understand. Thank you for clarifying 15 that. 16 How many employees does Blankenship 17 Construction have? 18 A. Main staff, which I consider is my 19 full-time employees, somewhere around 25. 20 Q. You've got part-time folks as well? 21 A. Part time who we -- when we were on the 22 commercial sites and we hire out the local trades: 23 Operators, laborers, teamsters, whatnot. 24 Q. These full-time employees, do they all</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. For the agricultural side, is it all 2 equipment -- you're always able to use your own 3 equipment, or do you ever have to rent for the 4 agricultural side? 5 A. On doing the earthwork, you mean? 6 Q. Yes. 7 A. Yes. We typically use our own equipment. 8 So during the year, for Blankenship 9 Construction, a lot of the equipment that we own is 10 done -- is used on the commercial side. So there's 11 very limited equipment available to do anything on 12 the private side until we start getting some of our 13 commercial work done, and some of the equipment 14 starts coming back. And then I kind of gather up 15 jobs that people want done, and then later on in the 16 year when I have equipment available, we run out and 17 try to knock some of these things out before winter 18 sets. 19 Q. What are -- give me some of the types of 20 jobs that you do for the agricultural, individual 21 farmer type work. 22 A. It could be drainage work, it could be 23 brush removal, it could be building ponds. 24 Q. Do you ever do any work for any of the</p>
<p style="text-align: right;">Page 35</p> <p>1 know how to operate the equipment? 2 A. No. 3 Q. Okay. And how many operators do you have 4 on staff of those full time -- the 25 full-time 5 folks? 6 A. Ten, I'd say. 7 Q. The other ones are office, back office -- 8 A. Correct. 9 Q. Where is its offices located? 10 A. Mulberry Grove, Illinois. 11 Q. Anywhere else? 12 A. No. 13 Q. Does it do all work in Southern Illinois 14 or elsewhere? 15 A. No. We do work in Missouri. We have done 16 work in Indiana, Illinois. 17 Q. Does it own its own equipment? 18 A. Yes. 19 Q. Okay. And it uses its own equipment for 20 all these jobs? 21 A. Yes. 22 Q. Does it ever rent or -- 23 A. Oh, yeah, we rent from time to time 24 whenever we run short on the equipment.</p>	<p style="text-align: right;">Page 37</p> <p>1 levee districts? 2 A. Yes. 3 Q. Do you have contracts with them? 4 A. No contracts. 5 Q. And how do they get in touch with you to 6 have you do work? 7 A. They just give me a call. 8 Q. And you have no contracts with them at 9 all? 10 A. No contracts. 11 Q. How do you get paid? Just invoice? 12 A. Invoice. 13 Q. Who is it over there that you speak with 14 about these jobs? 15 A. There's board members over there, and 16 typically it's Randy Braun. 17 Q. How do you spell Randy's last name? 18 A. B-R-A-U-N. 19 Q. He's a board member? 20 A. Correct. 21 Q. Which agricultural district is that, or 22 which levee district? Is that the Vandalia? 23 A. Vandalia Levee District. 24 Q. Was there anybody else you talk with over</p>

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<p style="text-align: right;">Page 38</p> <p>1 there?</p> <p>2 A. Not as of lately, no.</p> <p>3 Q. Well, not lately, but how about in the</p> <p>4 past, who have you spoken --</p> <p>5 A. In the past, Ken Cripe. That was years</p> <p>6 ago.</p> <p>7 Q. And any relation to John Cripe?</p> <p>8 A. I don't believe.</p> <p>9 Q. How much -- I mean, how often do you do</p> <p>10 work for the Vandalia Levee District?</p> <p>11 A. We did a project for them last fall, I</p> <p>12 believe it was, and it was mowing their levees. Not</p> <p>13 mowing grass; mowing grass with a brush removal</p> <p>14 excavator.</p> <p>15 Q. Okay. So the mowing brush?</p> <p>16 A. Oh, and I take that back. We also did</p> <p>17 some drainage work for them this past -- no. That</p> <p>18 was last spring, yeah.</p> <p>19 Q. Where was that?</p> <p>20 A. That was in their levee district.</p> <p>21 Q. What did you do? What type of drainage</p> <p>22 work?</p> <p>23 A. Just cleaning out ditches, existing</p> <p>24 ditches.</p>	<p style="text-align: right;">Page 40</p> <p>1 2022, and then you did some drainage work. When was</p> <p>2 that?</p> <p>3 A. I believe the drainage work was in 2022,</p> <p>4 and the brush work was in '21. You have to excuse</p> <p>5 me on my dates -- my fuzziness -- because I have got</p> <p>6 a lot of stuff that -- you know, multiple jobs going</p> <p>7 on. So I don't know exact dates.</p> <p>8 Q. Okay. In the last five years, what are</p> <p>9 the other jobs that you recall doing in the levee</p> <p>10 district?</p> <p>11 A. That was pretty much it for quite a while.</p> <p>12 We haven't done anything for them for several years</p> <p>13 prior to 2021.</p> <p>14 Q. How long have you known Nate Marlen?</p> <p>15 A. I've known of Nate Marlen for probably 10,</p> <p>16 15 years. I really only got to meet him probably</p> <p>17 five years ago.</p> <p>18 Q. So you've -- wait. You've known him for</p> <p>19 10 or 15, but you only met him 5 --</p> <p>20 A. I knew of him.</p> <p>21 Q. Oh.</p> <p>22 A. I talked to him maybe once in that time</p> <p>23 period 10, 15 years ago. I knew his dad a little</p> <p>24 bit. I would talk to his dad a couple of times. We</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. So how does that usually work? They call</p> <p>2 you and say, "Hey, we need some work done"?</p> <p>3 A. Yes.</p> <p>4 Q. And then do you walk the property with</p> <p>5 them?</p> <p>6 A. We go out, and we look at it, and we try</p> <p>7 and formulate some kind of a ballpark cost. You</p> <p>8 know, when I say "ballpark" -- this is usually what</p> <p>9 I tell them.</p> <p>10 I say, "This could be either -- you know,</p> <p>11 it might go over this goalpost, or it might come</p> <p>12 under it."</p> <p>13 But they usually say, "Hey, that's what we</p> <p>14 want to get done."</p> <p>15 I come in by the hour and perform the</p> <p>16 work, and then once we get done, we invoice them.</p> <p>17 Q. Did you ever communicate with them in</p> <p>18 writing?</p> <p>19 A. No.</p> <p>20 Q. All on the phone?</p> <p>21 A. Yes.</p> <p>22 Q. Or in person?</p> <p>23 A. Or in person.</p> <p>24 Q. So you recall mowing brush in the fall of</p>	<p style="text-align: right;">Page 41</p> <p>1 have ground adjoining each other. We're kind of all</p> <p>2 down in that river bottom area.</p> <p>3 Q. Now, setting aside the work that was done</p> <p>4 on the 530 acres that Triangle Grain is renting,</p> <p>5 what other work have you done -- has Blankenship</p> <p>6 Construction done for Nate Marlen?</p> <p>7 A. We helped him out on some other property</p> <p>8 down in the southern part of the river bottom of</p> <p>9 south Vandalia, cleaning out some ditches.</p> <p>10 Q. A different property altogether?</p> <p>11 A. A different property altogether.</p> <p>12 Q. Okay. What else have you done?</p> <p>13 A. That's it.</p> <p>14 Q. So cleaning ditches and the work on this</p> <p>15 property north of Lucas's property is the only work</p> <p>16 that you've done for Marlen?</p> <p>17 A. Yes, yes.</p> <p>18 Q. How do you get paid?</p> <p>19 A. Invoice, a check.</p> <p>20 Q. Still have those?</p> <p>21 A. I would assume.</p> <p>22 Q. How do you communicate with him?</p> <p>23 A. Communicate with Nate?</p> <p>24 Q. Yep.</p>

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<p>1 A. Either by phone or in person.</p> <p>2 Q. You don't text or email?</p> <p>3 A. Oh, yeah, we text.</p> <p>4 Q. Have you still got a text chain with him</p> <p>5 on your phone?</p> <p>6 A. I might.</p> <p>7 Q. The other work that you did cleaning out</p> <p>8 ditches, do you remember how much he paid you for</p> <p>9 that?</p> <p>10 A. No.</p> <p>11 Q. How long ago was that?</p> <p>12 A. That would have been probably somewhere</p> <p>13 around '21, and if I'm not mistaken on that, I don't</p> <p>14 believe we actually invoiced Nate on that.</p> <p>15 We worked out a deal where a couple of my</p> <p>16 guys went down there just to help him out a couple</p> <p>17 of days, and I believe Nate paid them guys. Nate</p> <p>18 put some fuel in my equipment, and pretty much just</p> <p>19 helped him out. There was really no invoice, to my</p> <p>20 knowledge, on that particular work. It was only a</p> <p>21 couple of days.</p> <p>22 Q. So two days' worth, and he didn't pay you</p> <p>23 except for filling up your guys' tanks or your</p> <p>24 tanks?</p>	<p>1 A. Yes.</p> <p>2 Q. And the last page, that's your signature?</p> <p>3 A. Yes, it is.</p> <p>4 Q. You're verifying the answers you've given</p> <p>5 are true and correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. If you go to number 2, Page 2, the</p> <p>8 question was: "Please provide a description of all</p> <p>9 services that you have performed on or behalf or at</p> <p>10 the request of Nathan Marlen at any time between</p> <p>11 2020 and the present."</p> <p>12 You referred in -- your answer is: "Doug</p> <p>13 Blankenship, on behalf of Blankenship Construction</p> <p>14 Company, agreed to complete drainage work on the</p> <p>15 Marlen property. This drainage work included the</p> <p>16 removal of an old concrete structure, which was in</p> <p>17 years past erected by the Marlen family, which was</p> <p>18 now impeding the natural flow of drainage on the</p> <p>19 Marlen property."</p> <p>20 My question is: What is "Marlen property"</p> <p>21 referring to?</p> <p>22 A. I don't understand your question.</p> <p>23 Q. So when you say "Marlen property," where</p> <p>24 is that located?</p>
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<p>1 A. He -- well, no, he didn't. I mean, we</p> <p>2 just -- we had equipment down there. I was working</p> <p>3 on my own farm, which is adjacent to his. He wanted</p> <p>4 to know if he could use it for a little bit and if I</p> <p>5 had a couple of guys that was available.</p> <p>6 And I said, "Yeah, go ahead." Neighborly</p> <p>7 deal.</p> <p>8 Q. So to be neighborly, you let him use the</p> <p>9 equipment and the labor?</p> <p>10 A. Well, he paid the guys himself, and he put</p> <p>11 fuel in my equipment when it was all said and done.</p> <p>12 Q. Any reason why you didn't run that through</p> <p>13 Blankenship Construction Company rather than --</p> <p>14 A. It was just a neighborly deal.</p> <p>15 Q. So now you don't think you received</p> <p>16 invoices or checks on that?</p> <p>17 A. I don't believe so on that one, no.</p> <p>18 (Exhibit 4 was marked for identification.)</p> <p>19 BY MR. ST. ONGE</p> <p>20 Q. Let me show you what we've marked as</p> <p>21 Exhibit 4. It's called "Blankenship Construction</p> <p>22 Company and Doug Blankenship's combined response to</p> <p>23 Plaintiff Joe Lucas's interrogatories."</p> <p>24 Have you seen these before?</p>	<p>1 A. Marlen property.</p> <p>2 Q. Is that the one that you did ditches for a</p> <p>3 couple of years ago?</p> <p>4 A. No.</p> <p>5 Q. Okay. Is this the one that you're</p> <p>6 farming -- Triangle Grain is farming?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. You didn't list the other property</p> <p>9 on this answer. I'm just curious. Is that just</p> <p>10 something you forgot?</p> <p>11 A. Yes, I forgot about it.</p> <p>12 Q. So by "Marlen property" in this answer,</p> <p>13 you're referring to the farmland that's north of Joe</p> <p>14 Lucas's place?</p> <p>15 A. Yes, yes.</p> <p>16 Q. That drainage work on the Marlen property,</p> <p>17 is that still work that's still ongoing?</p> <p>18 A. Always -- always is. When you own the</p> <p>19 farm ground, you always have to keep your ditches</p> <p>20 maintained.</p> <p>21 Q. Okay. So that's something that you</p> <p>22 continue to do?</p> <p>23 A. Yes.</p> <p>24 Q. And there are ditches around that farmland</p>

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<p style="text-align: right;">Page 46</p> <p>1 that you're presently maintaining?</p> <p>2 A. Not on a -- not like on a daily basis.</p> <p>3 It's just as needed.</p> <p>4 Q. Okay.</p> <p>5 A. It's just maintenance.</p> <p>6 Q. Once the property gets full of water, then</p> <p>7 you go and clear out these ditches?</p> <p>8 A. Once the property gets full of silt and</p> <p>9 we're blocking water, then we have to go in and</p> <p>10 remove it.</p> <p>11 Q. Remove what? The silt?</p> <p>12 A. The silt, right. Trees that have fallen</p> <p>13 away.</p> <p>14 Q. Okay. And this drainage work that you</p> <p>15 refer to in your answer to number 2, who at the</p> <p>16 company did this work actually? Who got the</p> <p>17 equipment and did this work?</p> <p>18 A. That would have -- well, that was a couple</p> <p>19 of guys down there. Well, Rex Moreland was one.</p> <p>20 MR. BLEYER: Rex Moreland, you said?</p> <p>21 THE DEPONENT: Rex Moreland.</p> <p>22 BY MR. ST. ONGE</p> <p>23 Q. You said a couple of guys. Who else?</p> <p>24 A. And Randy Hoyle.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. -- not with Blankenship Construction.</p> <p>2 Q. So all the ditch -- you're saying all of</p> <p>3 the ditch work was done by Triangle Grain and not</p> <p>4 Blankenship Construction?</p> <p>5 A. Correct.</p> <p>6 Q. And the employees are employees of both?</p> <p>7 A. Both.</p> <p>8 Q. Both Blankenship Construction and Triangle</p> <p>9 Grain?</p> <p>10 A. Correct.</p> <p>11 Q. And when your guys do this work, do you</p> <p>12 communicate with Nate Marlen and tell him</p> <p>13 specifically what's going on and which ditches</p> <p>14 you're going to be maintaining and when you're going</p> <p>15 out there?</p> <p>16 A. Yes. When we looked at the project, we</p> <p>17 basically had an overview of, well, here's what we</p> <p>18 need to do.</p> <p>19 The drain points, there's very few on this</p> <p>20 farm. The one drain point that is on the</p> <p>21 farms -- on the west side, there's a tube that goes</p> <p>22 to the large levee, and everything on his farm,</p> <p>23 besides maybe the eastern third, drains through this</p> <p>24 one tube.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. Who else?</p> <p>2 A. I believe Chris Matthews may have been</p> <p>3 there for a small amount of time, and he didn't run</p> <p>4 any excavation -- or I should say he didn't run any</p> <p>5 track hoes. He just ran a bulldozer, which was not</p> <p>6 in the ditches.</p> <p>7 Q. Okay. So when you -- these three</p> <p>8 employees, these are guys that maintained the</p> <p>9 ditches all around that property, or are you talking</p> <p>10 about the south side of the property?</p> <p>11 A. They was on the property maintaining the</p> <p>12 existing ditches that was there throughout the whole</p> <p>13 entire property.</p> <p>14 Q. Okay.</p> <p>15 A. That one particular entrance down there,</p> <p>16 down at the concrete structure was Rex Moreland.</p> <p>17 Q. Got it. Okay.</p> <p>18 And, again, this work is all encompassed</p> <p>19 within that lease that you have with Marlen?</p> <p>20 A. Right.</p> <p>21 Q. No separate invoices or contracts for</p> <p>22 drainage ditch maintenance?</p> <p>23 A. No. With Triangle Grain --</p> <p>24 Q. Okay.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. I'm sorry. Say that again. All</p> <p>2 about -- all except for a third goes through that?</p> <p>3 A. Roughly a third of the acres on the Marlen</p> <p>4 farm drains to the east, which would go into the</p> <p>5 Vandalia Levee District system.</p> <p>6 Q. Okay.</p> <p>7 A. The rest of this property drains down</p> <p>8 through a tube that goes through the levee</p> <p>9 district's levee and then drains onto Nate's western</p> <p>10 90 acres. I believe it's 90. And then that is</p> <p>11 carried by a ditch that goes down along the levee</p> <p>12 south to -- that goes to Joe.</p> <p>13 Q. So I'll get a map here in a second.</p> <p>14 A. That would be great.</p> <p>15 Q. It's a good time to do that.</p> <p>16 (Exhibit 5 was marked for identification.)</p> <p>17 BY MR. ST. ONGE</p> <p>18 Q. And when you told Nate about the work that</p> <p>19 you were going to be doing, that was near Joe</p> <p>20 Lucas's property?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. What did you tell him you were going to be</p> <p>23 doing?</p> <p>24 A. I said we were going to clean this ditch</p>

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<p style="text-align: right;">Page 50</p> <p>1 out that comes through the levee. There's a tube 2 that comes to this main levee that drains all this 3 water off the east side of the levee. 4 Q. I'm going to give you a marker here. I've 5 got a black Sharpie marker here, and I want you to 6 make a circle around the property that you're 7 talking about when you're talking about the Marlen 8 property. 9 A. The whole entire property or just this 10 piece? 11 Q. Yeah. I understand it's -- but go ahead. 12 A. The picture doesn't have all the property. 13 Q. Okay. Well, show us the boundary lines, 14 as you understand it, on this map. 15 A. Of this 90? 16 Q. Yes. The area that you're that -- that 17 Triangle Grain is maintaining. 18 A. We'll just do this. 19 Q. Okay. 20 A. We'll start here. It almost has it all. 21 I can't really see. 22 Q. Yeah. If you back up and get it at an 23 angle -- 24 A. Right here.</p>	<p style="text-align: right;">Page 52</p> <p>1 marking. 2 MR. DEVORE: Here we go. 3 BY MR. ST. ONGE 4 Q. So you're going to put a dotted mark on 5 the levee? 6 A. That's the levee. 7 MR. DEVORE: Does it go all the -- 8 THE DEPONENT: Yeah. The levee 9 continues on down. 10 BY MR. ST. ONGE 11 Q. And then you transversed that with a mark 12 showing the tube? 13 A. Right here. 14 MR. BLEYER: Put a "T" by that. 15 BY MR. ST. ONGE 16 Q. And two-thirds of the drainage goes 17 through that; is that right? 18 A. That is correct. 19 Q. Okay. And then where does the rest drain? 20 A. The rest would come over here off this 21 picture into a ditch. Over here it's a levee 22 district. 23 Q. And off of that pasture, there's no other 24 drainage area?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Well, as I understand, this is Joe's 2 property, right? 3 A. Yes, it is. I'm trying to figure out the 4 line. 5 Q. Got it. 6 A. Here we go like this, and it goes all the 7 way up here like this, here. Now, I'm not exactly 8 sure in this timber who owns what, but I'll just for 9 sake of -- the agricultural field I farmed is right 10 here. 11 Q. Okay. Is that clear there? You can 12 see -- this is all pretty well clear? 13 A. Yes. That's a field. 14 Q. That's a field, a pasture? 15 A. Correct. 16 Q. All right. When you say all about a third 17 drains to the east, will you show me where that tube 18 is? 19 A. Oh, the tube? Right here. 20 Q. So this is -- this here, is this a levee? 21 A. That is a levee. 22 Q. Okay. And a tube right there? 23 MR. BLEYER: When you say "that," 24 "there," you mean the -- so we know what you're</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Here? 2 Q. Yes. 3 A. No. 4 Q. Okay. 5 A. I mean -- I mean, little ones here and 6 there, but the majority of all this drains -- this 7 is the Kaskaskia River. This all drains -- 8 Q. Yeah. That's marked. Just for the 9 record, that's all marked, but . . . 10 A. All the farm ground, in general, and them 11 river bottoms fall with the flow of the river. So 12 the river is running south, and everything wants to 13 come south in the farm fields. 14 From this point right here to this tube 15 right here, which is -- 16 Q. And the point there is up at the -- 17 A. That would be the north, the extreme 18 northeast corner of the Marlen family farm. 19 Q. Okay. 20 A. There is approximately a foot and a half 21 of fall from here to here, which would be close to 22 half a mile. So as you can imagine, this is all 23 really flat. So, roughly -- 24 Q. And you're marking -- what are you marking</p>

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<p style="text-align: right;">Page 54</p> <p>1 just for the record? Is that --</p> <p>2 A. This is -- I'm going to say this is,</p> <p>3 roughly, what drains back this direction.</p> <p>4 Q. Okay.</p> <p>5 A. The rest of this.</p> <p>6 Q. You've put three marks going to the right,</p> <p>7 okay? Just for the record here.</p> <p>8 A. Okay. The rest of this area here wants to</p> <p>9 flow this direction, all coming to this tube that</p> <p>10 goes through the levee.</p> <p>11 Q. Okay. So all this water that you've</p> <p>12 marked as falling down this way, that goes onto --</p> <p>13 A. That goes through a tube.</p> <p>14 Q. The farm property?</p> <p>15 A. Right. That goes through a tube that is</p> <p>16 owned by the Vandalia Levee District, and it comes</p> <p>17 right here. And as soon as it exits the end of the</p> <p>18 tube, there's an existing ditch that runs right down</p> <p>19 along the west side of the levee.</p> <p>20 Q. Yes. Can you put a "D" right next to</p> <p>21 that? Would you --</p> <p>22 A. [Deponent indicated.]</p> <p>23 Q. Okay. So there's a ditch that runs</p> <p>24 north-south then?</p>	<p style="text-align: right;">Page 56</p> <p>1 It's a blowup of that portion of that field that</p> <p>2 you've --</p> <p>3 A. Correct.</p> <p>4 Q. That you maintained; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And can you show us the boundary line, as</p> <p>7 you understand it, between the property line</p> <p>8 that -- between what Marlen owns and what Joe Lucas</p> <p>9 owns?</p> <p>10 MR. HASENSTAB: I hate to interrupt,</p> <p>11 but just for clarification, can we show where north</p> <p>12 is on this?</p> <p>13 MR. DEVORE: I did on that mine, too,</p> <p>14 if that's what you're asking.</p> <p>15 MR. HASENSTAB: I apologize for</p> <p>16 interrupting. My confusion.</p> <p>17 Go ahead. I'm sorry.</p> <p>18 THE DEPONENT: As I understand the</p> <p>19 boundary line, not being a surveyor, I'm assuming</p> <p>20 it's by going off of this property line by crossing</p> <p>21 the east side of the levee. It runs through here</p> <p>22 approximately like this.</p> <p>23 BY MR. ST. ONGE</p> <p>24 Q. And above that is the Marlen property, and</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. And that connects eventually then to the</p> <p>3 Kaskaskia River?</p> <p>4 A. Yes. I believe that would be on Joe's</p> <p>5 property, right approximately right here.</p> <p>6 Q. Okay. And that ditch -- how is that ditch</p> <p>7 created? Did you create that ditch?</p> <p>8 A. No. That ditch was there for -- years</p> <p>9 ago. I would assume that -- what I've been told by</p> <p>10 the Vandalia Levee District is that ditches along</p> <p>11 there -- any ditches along the levees was made to</p> <p>12 enhance drainage when they built the levee system.</p> <p>13 Q. And where do you understand Joe Lucas's</p> <p>14 property to be? You can draw a circle where you</p> <p>15 believe his property to be.</p> <p>16 A. [Deponent indicated.]</p> <p>17 Q. Put an "L" in the middle of that, would</p> <p>18 you?</p> <p>19 A. [Deponent indicated.]</p> <p>20 Q. Okay.</p> <p>21 (Exhibit 6 was marked for identification.)</p> <p>22 BY MR. ST. ONGE</p> <p>23 Q. Let me show you another one that we've</p> <p>24 marked as Exhibit 6. This is a Google aerial map.</p>	<p style="text-align: right;">Page 57</p> <p>1 below that is the Lucas property?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And why don't you just put an "L"</p> <p>4 up on the -- the below.</p> <p>5 A. [Deponent indicated.]</p> <p>6 Q. And you've not seen a survey, correct --</p> <p>7 A. No.</p> <p>8 Q. -- to show what the actual line is?</p> <p>9 A. No.</p> <p>10 Q. But it's roughly -- that line that you've</p> <p>11 drawn is roughly where?</p> <p>12 A. Roughly.</p> <p>13 Q. Where the trees begin; is that right?</p> <p>14 A. Right, correct.</p> <p>15 Q. Okay. You can set those aside for now.</p> <p>16 Now, at some point in the --</p> <p>17 MR. BLEYER: May we sit down?</p> <p>18 MR. ST. ONGE: It's up to you.</p> <p>19 BY MR. ST. ONGE</p> <p>20 Q. At some point in the spring or the summer</p> <p>21 of 2021, I understand from your interrogatory</p> <p>22 answers in this case that Rex Moreland, a</p> <p>23 Blankenship employee, entered the Lucas property to</p> <p>24 do some drainage work?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. A Blankenship and Triangle Grain employee.</p> <p>2 Q. Okay. So he's an employee of both</p> <p>3 companies?</p> <p>4 A. Mm-hmm, yes.</p> <p>5 Q. And he's the only one that entered and did</p> <p>6 some property drainage -- or did some drainage work</p> <p>7 at this time; is that right?</p> <p>8 A. Rex was working on this stretch of this</p> <p>9 ditch down through Marlen.</p> <p>10 Q. Okay.</p> <p>11 A. Randy --</p> <p>12 Q. Why don't you make a mark on there and</p> <p>13 show me what you're talking about.</p> <p>14 A. [Deponent indicated.]</p> <p>15 Q. Anytime you make a reference on the map,</p> <p>16 it's not going to come through.</p> <p>17 A. Roughly starting here, going down to</p> <p>18 there.</p> <p>19 Q. So Rex was doing work on that ditch on</p> <p>20 that map that you've marked?</p> <p>21 A. Correct.</p> <p>22 Q. And was Rex being paid by Blankenship for</p> <p>23 this work that he did?</p> <p>24 A. I believe at that point in time he was</p>	<p style="text-align: right;">Page 60</p> <p>1 see -- the levee is right here. You can see that</p> <p>2 lighter green streak right here?</p> <p>3 BY MR. ST. ONGE</p> <p>4 Q. So why don't you just write a line next to</p> <p>5 that and put --</p> <p>6 A. I'll dash it.</p> <p>7 Q. Okay. On Exhibit 6, you're putting a dash</p> <p>8 on the levee?</p> <p>9 A. [Deponent indicated.]</p> <p>10 MR. BLEYER: Are you taking a break?</p> <p>11 MR. ST. ONGE: Yeah, just a minute.</p> <p>12 (A short break was taken.)</p> <p>13 BY MR. ST. ONGE</p> <p>14 Q. Back on the record.</p> <p>15 So we were talking about before the break</p> <p>16 about Rex Moreland -- I'll let you finish up on your</p> <p>17 phone.</p> <p>18 A. Oh, go ahead.</p> <p>19 Q. And we were talking before the break about</p> <p>20 Rex Moreland.</p> <p>21 A. Yes.</p> <p>22 Q. And you said he went on to the property in</p> <p>23 the summer of 2021 is what you said in your</p> <p>24 interrogatory answer, and you confirmed it today.</p>
<p style="text-align: right;">Page 59</p> <p>1 being paid by Triangle.</p> <p>2 Q. Okay. And did you have a -- did you have</p> <p>3 some -- that would be -- all be in some payroll</p> <p>4 records, right?</p> <p>5 A. Potentially.</p> <p>6 Q. He received checks from Blankenship</p> <p>7 Construction and also from Triangle Grain?</p> <p>8 A. Yes, either a paycheck, or sometimes we</p> <p>9 did cash.</p> <p>10 Q. Okay. And what would decide whether you</p> <p>11 did a paycheck or cash?</p> <p>12 A. Well, whatever he wanted that week.</p> <p>13 Q. Yeah, okay.</p> <p>14 MR. BIERMAN: I tell you what. Let's</p> <p>15 take a quick break. Can we?</p> <p>16 MR. BLEYER: Before we go off the</p> <p>17 record, can you have him-- is it all right if he</p> <p>18 writes "Rex" on that line where he said that Rex was</p> <p>19 doing the work?</p> <p>20 MR. ST. ONGE: Go ahead.</p> <p>21 MR. BLEYER: Sorry.</p> <p>22 MR. DEVORE: Can you point out is</p> <p>23 that the levee, or is that the actual ditch?</p> <p>24 THE DEPONENT: The levee you</p>	<p style="text-align: right;">Page 61</p> <p>1 My question is: Who was it that was</p> <p>2 paying Rex for the work that he did on the south</p> <p>3 side of Marlen's property -- on Lucas's property in</p> <p>4 the summer of 2021?</p> <p>5 A. I can't recall exactly who paid him that</p> <p>6 week.</p> <p>7 Q. Would there have been a record? Either of</p> <p>8 these companies would have a record of payment?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you said sometimes he was paid</p> <p>11 in cash, and sometimes he was paid through the</p> <p>12 company through a check?</p> <p>13 A. Right.</p> <p>14 Q. When you pay him by cash, do you withhold</p> <p>15 taxes?</p> <p>16 A. No. It's usually under -- we keep</p> <p>17 underneath like a hundred bucks. You know, if he</p> <p>18 needs a hundred dollars here or there, you know, for</p> <p>19 a day's worth of work, something like that, that's</p> <p>20 what we do.</p> <p>21 Q. So you just paid him a hundred dollars to</p> <p>22 do a day's worth of work?</p> <p>23 A. I mean, depending on how many hours he</p> <p>24 worked, yes. It could be a hundred, two hundred.</p>

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<p style="text-align: right;">Page 62</p> <p>1 Q. And he's the one dictating whether he gets 2 paid in cash or whether he gets paid formally? 3 A. Yes, whenever he needed some cash for 4 whatever personal needs he needed. 5 Q. And he couldn't just get that through a 6 check? 7 A. I assume he could. 8 Q. And anytime he asked to be paid with cash, 9 you guys would oblige him and pay him with cash? 10 A. If we could -- if we had it, you know, if 11 I had it in my pocket. 12 Q. And when you pay him with cash, you're not 13 making a record of what his taxes are; is that 14 correct? 15 A. No. 16 Q. Sorry. You're saying "no," but am I being 17 correct? 18 A. Yes. 19 Q. So if you paid him in cash, you wouldn't 20 have a record of whether that was paid through 21 Triangle Grain or if that was paid through 22 Blankenship; is that correct? 23 A. That's correct, right, and that was done 24 rarely, very rarely, on occasion.</p>	<p style="text-align: right;">Page 64</p> <p>1 area. 2 Q. Okay. As far as you know, looking at the 3 south side of the property next to the Lucas 4 work -- next to the Lucas property -- Rex Moreland 5 was the only one doing work in that area? 6 A. Yes. 7 Q. You weren't there when he was doing that 8 work? 9 A. No, no. 10 Q. Do you know if Rex ever spoke with Nate 11 Marlen about that work that he was doing? 12 A. I do not know that. 13 Q. Would that be odd to you if Rex and Nate 14 were talking, or would that seem -- 15 A. Well, I mean, it's -- I mean, Nate -- and 16 they interacted whenever Nate was around. You know, 17 he wasn't there -- rarely during his project. I 18 instructed Rex on what to do. 19 Q. Okay. Let's talk about that. 20 Did you walk the property with Rex and 21 say, "This is what we need to have done?" Or did 22 you just tell him this is what -- 23 A. I just told him. 24 Q. You weren't on the property with him?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Was that done here? 2 A. I couldn't tell you. I don't remember. 3 Q. But you would have records -- 4 A. If he was paid through Blankenship 5 Construction on that certain date on that job, which 6 I don't know if we can pin it down to the exact day, 7 then there would be record. 8 Q. Okay. And if he was -- alternatively, if 9 he was paid through Triangle Grain -- I'm sorry. I 10 don't know if you said "Blankenship." 11 If he was paid by either one of those 12 companies for that work, you'd have a record of it? 13 A. Yes. 14 Q. And sitting here today, you don't know 15 which company was paying? 16 A. I can't remember, no. I'm assuming that 17 he was probably paid by a check through Blankenship 18 Construction on this. I'm assuming that. 19 Q. And why do you say that? 20 A. Because we was doing several other 21 projects around at that time to where we wasn't 22 going to mix up that arrangement, so to speak, 23 because I believe at that time, we may have been 24 doing a few odds and ends for other people in that</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Not at that time, no. 2 Q. Okay. And what did you tell him needed to 3 be done? 4 A. I told him to go to the south end of that 5 ditch that he was cleaning out, and there was a 6 concrete structure there in the ditch. I said to go 7 ahead and remove that. 8 Q. And you just told him that? You didn't 9 show him a map; you didn't point it out to him? 10 A. No, I did not. 11 Q. You just said, "Walk to the bottom of 12 that, and you'll see a concrete structure?" 13 A. As you're working down the ditch cleaning 14 this ditch on Nate Marlen, when you get down there, 15 you will see an old concrete structure in the ditch 16 line. 17 Q. How do know there was a concrete structure 18 in there? 19 A. Because I've discussed this with Nate, and 20 you could see it on the maps, and I had seen it 21 prior to that whenever I went and had looked at the 22 property. 23 Q. Okay. So let's talk about that. When did 24 you go down and look at the property?</p>

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<p style="text-align: right;">Page 66</p> <p>1 A. I don't know the exact date. It was prior 2 to the work in '21. 3 Q. If you go to Exhibit Number 4 -- 4 MR. HASENSTAB: Which one is that at? 5 MR. ST. ONGE: The interrogatories. 6 MR. HASENSTAB: Okay. 7 BY MR. ST. ONGE 8 Q. Yeah, if you flip to the first page. 9 So you're identified here in the answer to 10 the question that asks for the people, the employees 11 or agents of Blankenship who entered the Lucas 12 property, and your answer says that you met with 13 Plaintiff on or about February 2022 to discuss 14 removal of the concrete structure and entered into 15 an agreement to perform certain services on behalf 16 of Plaintiff. 17 Do you see that, that you wrote that 18 there? 19 A. Yes. 20 Q. Okay. And you're not listed? 21 A. Wait a minute. Let's just -- to verify. 22 Q. Yeah. 23 A. That wasn't to meet with him to remove the 24 structure. The structure might have been removed at</p>	<p style="text-align: right;">Page 68</p> <p>1 A. It was prior to the work. 2 Q. Okay. How far before? This work happened 3 in the summer of 2021. When was the meeting? 4 A. Spring maybe -- 5 Q. Okay. 6 A. -- okay? 7 So as a group that we collectively decided 8 that -- on this drainage work, I asked Jim and Nate 9 about the structure that was down there. 10 I said, "Hey, this thing, I've seen it. 11 It's blocking." 12 Q. That's what I want to know. When did you 13 see it for the first time? 14 A. I would assume in the spring of '21. 15 Q. So you're walking on the property? 16 A. Yeah, I've seen it. I've seen it. 17 Q. Tell me about that. Beforehand you saw 18 it. Like, you walked down there; you saw it. Were 19 you walking all around that property at that point? 20 A. Not all around that property at that 21 point. I was looking at it because I was always 22 looking at Google Maps, and I can identify where. 23 MR. BIERMAN: Just to be clear, when 24 you say "property," say "Lucas property."</p>
<p style="text-align: right;">Page 67</p> <p>1 that time. 2 Q. Okay. 3 A. This was a meeting to -- 4 Q. I understand that. 5 A. Okay. 6 Q. But you said that you had been on the 7 property another time? 8 A. Yeah. 9 Q. Okay, but that's not listed in your answer 10 here? 11 A. Well, I mean, I looked at the property 12 prior to doing any work. 13 MR. DEVORE: Can we clarify 14 "property," please, whether it's Lucas or Marlen? 15 BY MR. ST. ONGE 16 Q. Where the concrete structure -- 17 A. I assumed that concrete structure was on 18 Marlen property because, at that time, there was no 19 survey. 20 Q. Okay. Did you ask Nate Marlen: "Hey, is 21 that concrete structure" -- 22 A. No, I did not. We -- me and Nate and his 23 father, Jim, had a meeting in the office. 24 Q. When was this?</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. ST. ONGE: Thank you. So good 2 point. 3 BY MR. ST. ONGE 4 Q. So we're talking about the Lucas property, 5 and you're walking around the Lucas property? 6 A. No, I was not walking on the Lucas 7 property. 8 Q. Okay. 9 A. I was on Jim Marlen's property, the Marlen 10 family farm, looking at the structure in the ditch. 11 Q. So if you pull up that map that you've 12 got -- Exhibit 6 -- where are you standing where you 13 can see that structure? 14 A. Approximately right here. 15 Q. Put a mark there. 16 A. [Deponent indicated.] 17 Q. Okay. And you can see the structure? 18 A. Yes. 19 Q. That's -- you didn't go further south than 20 that? 21 A. Me personally, no. 22 Q. Right. You couldn't actually go down 23 there, touch the concrete structure? 24 A. No.</p>

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<p style="text-align: right;">Page 70</p> <p>1 Q. Look in the ditch, nothing?</p> <p>2 A. You could see it. You could visually see</p> <p>3 it from standing right here in the ditch.</p> <p>4 Q. Okay. So you were not standing in the</p> <p>5 ditch next to the concrete structure at any point?</p> <p>6 A. No.</p> <p>7 Q. Even at any point?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. I was not down in the ditch physically</p> <p>11 looking at it and touching it, no.</p> <p>12 Q. Okay.</p> <p>13 A. I was standing up in the field looking at</p> <p>14 it from the field.</p> <p>15 Q. How far away would you say that is? A</p> <p>16 hundred feet?</p> <p>17 A. Yeah. I mean, a hundred, 200 feet. It</p> <p>18 was very visible in the ditch.</p> <p>19 Q. This is the springtime?</p> <p>20 A. I believe so.</p> <p>21 Q. I mean, is there any vegetation that's</p> <p>22 there at that point? I mean, is it -- the leaves</p> <p>23 are off the trees still, or are they still on the</p> <p>24 trees?</p>	<p style="text-align: right;">Page 72</p> <p>1 of the date.</p> <p>2 Q. Did you know if he ever owned that</p> <p>3 property where he put that concrete structure?</p> <p>4 A. I have no recollection whether he owned it</p> <p>5 or he didn't.</p> <p>6 Q. Did he tell you what it was? I mean, just</p> <p>7 a piece of concrete, or was it something that was --</p> <p>8 A. It was, like, tubes going through a</p> <p>9 concrete and armored-up tubes to try, and, you know,</p> <p>10 protect it with a sluice gate that would be able to</p> <p>11 drop the sluice gate to hold back water to flood</p> <p>12 this area for ducks.</p> <p>13 Q. To flood which area? The north area?</p> <p>14 A. The north area.</p> <p>15 Q. So you could block off the ditch in order</p> <p>16 to create flood north of that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And he told you that was there, and</p> <p>19 what did he tell you about it?</p> <p>20 A. He told me that he had put it in there</p> <p>21 years ago, and it was -- they never did use it, and</p> <p>22 now it's been years. It's dilapidated. It fell in,</p> <p>23 and it was blocking water.</p> <p>24 He said, "I put it in." He said, "Get it</p>
<p style="text-align: right;">Page 71</p> <p>1 A. They was -- they was maybe just starting</p> <p>2 to come onto the trees.</p> <p>3 Q. And tell me about the conversation that</p> <p>4 you had with Nate and his father.</p> <p>5 A. So collectively whenever we decided to</p> <p>6 enter into an agreement to do the drainage work</p> <p>7 for -- in lieu of some reduced rent on the cash rent</p> <p>8 of the ground, I said this concrete structure is</p> <p>9 down here in this ditch that's holding back water,</p> <p>10 and, actually, it was holding it back enough that</p> <p>11 the water was actually draining around it and was</p> <p>12 cutting -- trying to cut another ditch because it</p> <p>13 was so dilapidated, it had the ditch blocked off,</p> <p>14 and it was backing up silt and water.</p> <p>15 Jim at that point said, "Yeah, I put that</p> <p>16 in years ago thinking we was going to try and flood</p> <p>17 it for duck hunting." And he said, "It didn't</p> <p>18 really work out." He said, "Go ahead and take it</p> <p>19 out."</p> <p>20 Q. Jim Marlen told you that he put that</p> <p>21 concrete structure in there?</p> <p>22 A. Yes.</p> <p>23 Q. Did he tell you when he did that?</p> <p>24 A. It was years and years ago. I'm not sure</p>	<p style="text-align: right;">Page 73</p> <p>1 out of there if you want to get it out of there."</p> <p>2 Well, I suggested we get it out of there.</p> <p>3 You know, that's our problem right here. That's our</p> <p>4 problem child.</p> <p>5 Q. And who told you this? Nate?</p> <p>6 A. No, Jim.</p> <p>7 Q. Jim Marlen.</p> <p>8 A. Jim Marlen said he put it in there.</p> <p>9 And I said, "Well, I would suggest you</p> <p>10 pull it out of there."</p> <p>11 And he said, "Pull it out of there if you</p> <p>12 want to pull it out of there." So I pulled it out</p> <p>13 of there.</p> <p>14 Q. Well, who made the suggestion to pull it</p> <p>15 out? Jim?</p> <p>16 A. I made the suggestion to pull it out.</p> <p>17 Q. And he told you what in response?</p> <p>18 A. He told me that he put it in there years</p> <p>19 ago.</p> <p>20 He said, "If you want to pull it out, pull</p> <p>21 it out."</p> <p>22 I said, "Well, that's our problem. We've</p> <p>23 got to pull it out."</p> <p>24 Q. Okay. Was Nate in the room at this point?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. Nate was in the room at that point, and he 2 never said anything. 3 Q. Okay. How long was that meeting? 4 A. An hour. 5 Q. Was anybody else there apart from the 6 three of you? 7 A. Just the three of us. 8 Q. And what happened next then? 9 A. We agreed on what we was going to do next 10 on the farm, and they left. 11 Q. And with respect to the area on the Lucas 12 property, was the removing the concrete structure 13 the only thing that you discussed at that meeting 14 with the two Marlens? 15 A. I can't recall what all we discussed. I 16 mean, we may have discussed the other drainage work 17 that was going on, on the other side of the levee, 18 yeah. 19 Q. Did you discuss increasing the size of the 20 ditch on the Lucas property? 21 A. No, we did not discuss it. We did not 22 know that that was the Lucas property where the 23 concrete structure was at. 24 Q. You never asked him who owns the property</p>	<p style="text-align: right;">Page 76</p> <p>1 he put the structure in years ago. 2 Q. And when Jim told you that it was owned, 3 did he -- when Jim told you that Lucas owned that 4 property south, did he tell you where the boundary 5 line was? 6 A. No. 7 Q. He just said what? 8 A. He said that he put that structure in 9 years ago. 10 And he said, "If you want to get it out of 11 there, get it out of there." 12 I said, "Well, that's our problem. I 13 highly suggest we pull it out of there." 14 Q. Right, and I understand you're talking 15 about that. 16 My question is about where the Lucas 17 property line began, and you didn't have a 18 discussion with Jim or Nate about that? 19 A. No. No, we did not. 20 Q. Nobody said like, "Hey, those woods there 21 are Lucas's"? 22 I mean, when you say they told you that 23 the land of the south was Joe's, what -- I mean, did 24 you ask them: "Well, where is the line?"</p>
<p style="text-align: right;">Page 75</p> <p>1 south -- 2 A. No, no. 3 Q. I'm sorry. Let me finish my question. 4 A. Okay. 5 Q. You never asked Nate or Joe -- I'm 6 sorry -- Nate or Jim Marlen who owns the property 7 south of the farmland? 8 A. I was told previously that it was Joe 9 Lucas's property. 10 Q. Who told you that? 11 A. Nate. 12 Q. Okay. 13 A. And Jim. 14 Q. Okay. And at that same meeting? 15 A. No. This would have been prior to that. 16 Q. Okay. And so you were told that the land 17 south of the Marlen property was the Lucas property? 18 A. Yes. 19 Q. That would include the area where the 20 concrete structure was? 21 A. That would include, yes, now 22 knowing -- looking back, that would include where 23 the concrete structure was, but at that time there 24 was no survey markers. We didn't know, and Jim said</p>	<p style="text-align: right;">Page 77</p> <p>1 A. No, I did not. 2 Q. Did you know where the line was? 3 A. No. There was no marks, no surveys, no 4 nothing. I just assumed that when Jim said that he 5 put that structure in years ago in the ditch, that 6 that must have been either on the line or on Jim. 7 Q. Okay. And so you said, "We've got to pull 8 that structure out"? That was what you recommended? 9 A. That is what I recommended. 10 Q. When you discussed that boundary line, did 11 you know that Jim or Nate did not know where the 12 boundary line was? 13 A. We didn't discuss the boundary line. 14 Q. Did you do any independent work to figure 15 out where that boundary line was? 16 A. No. 17 Q. You knew you were close to Joe Lucas's 18 property line? 19 A. I assumed that it was on the line. I 20 didn't know how Jim would have put it on the line or 21 where it was at. That didn't -- that was done years 22 ago. 23 Q. You didn't bother to look into that? 24 A. No.</p>

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<p style="text-align: right;">Page 78</p> <p>1 Q. At the time of this meeting, do you know 2 that Jim or Nate did not know where the boundary 3 line is between the Marlen property and the Lucas 4 property? 5 A. Do they know now? 6 Q. No, at the time of the meeting. Did you 7 know that they -- 8 A. I did not know if they knew where the line 9 was. No, I don't know. 10 Q. And, again, you didn't look for -- you 11 didn't ask them for a survey or nothing? 12 A. I did not ask them for a survey. That's 13 typically not what we do. 14 I mean, you know, whenever we're working 15 on somebody's property, you know, we try and watch 16 what we're doing as far as the neighboring property, 17 but in this situation where it was right down at the 18 bottom of Jim's property, and it was right there 19 where Jim said he put that structure in years ago, 20 we just -- I just figured that was on Jim, or it was 21 on the line or whatever. 22 Q. You just took Jim and Nate's word for it? 23 A. I took their word for it that they put 24 that structure in years ago. They never told me</p>	<p style="text-align: right;">Page 80</p> <p>1 If you get down to the river -- 2 Q. So my question -- I think you're getting 3 far afield. 4 My question is: What did you tell Rex? 5 A. I told Rex to go ahead and pull that 6 structure out, and then go ahead -- if there's some 7 brush around it, whatever you've got to do to get to 8 that structure, go ahead and take out a few trees, 9 keep it at a minimum as possible. 10 And I said, "Clean it up, pull it out of 11 there and take care of it and open up anything on 12 the back side so it looks like we've got a little 13 bit of drainage going through there." 14 Q. And when you say "open up a little bit on 15 the back side," what do you mean by that? 16 MR. BIERMAN: That's not what he 17 said. You just restated his testimony. Ask him the 18 question. 19 MR. ST. ONGE: Can you -- 20 MR. BIERMAN: Have her read it back. 21 THE REPORTER: The answer? 22 MR. ST. ONGE: Yes. 23 THE REPORTER: Okay. 24 "I told Rex to go ahead and pull that</p>
<p style="text-align: right;">Page 79</p> <p>1 where the line was at. 2 Q. But you knew you were close? 3 A. I figured we was close, yes. 4 Q. And in your discussions -- so after that 5 meeting, you went back and talked to Rex? 6 A. Correct. 7 Q. What did you instruct Rex to do? 8 A. I instructed Rex to go down there as he 9 worked his way towards this structure. 10 I said, "When you get to that structure," 11 I said, "Go ahead and get that pulled out of there." 12 I said, "If you've got to clear it" -- there was 13 some trees growing around it a little bit on the 14 back side. It had silted in on the back side of it. 15 Like I said before, the water was wanting 16 to jump out around the structure and go down onto 17 Joe kind of willy-nilly. There wasn't -- from this 18 point on, there was a little bit of a ditch kind of 19 established. When I say "a little bit," it was 20 silted in, but once it gets so far in there, then it 21 just pretty much kind of spreads out. 22 Q. Okay. So -- 23 A. There's really not a, per se, ditch until 24 you get down to the -- if you look on a clear map.</p>	<p style="text-align: right;">Page 81</p> <p>1 structure out, and then go ahead -- if there's some 2 brush around it, whatever you've got to do to get to 3 that structure, go ahead and take out a few trees, 4 keep it at a minimum as possible. 5 And I said, 'Clean it up, pull it out 6 of there and take care of it and open up anything on 7 the back side so it looks like we've got a little 8 bit of drainage going through there.' 9 BY MR. ST. ONGE 10 Q. You said open up on the back side? 11 A. Right. 12 Q. On the south side of that concrete 13 structure? 14 A. Immediately adjacent to it because the 15 silt is collecting around the back side of it. 16 Q. You told him just to take out anything 17 that was back there? 18 A. "Take out the concrete structure, anything 19 in the existing ditch behind the structure as far as 20 silt or trees that may have been growing in there. 21 Just pull that out of that ditch, get it out of the 22 way. If you have to take out a few trees to get to 23 it because you've got a big machine, then we may 24 have to take out a few trees to get to it."</p>

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<p style="text-align: right;">Page 82</p> <p>1 I said, "Do as minimal as possible. Get 2 it out, get it cleaned up. Call it a day." 3 Q. And did he -- while he was working on 4 this, did he ever call you and ask you for guidance? 5 A. No. Rex is a veteran hand. I didn't have 6 to worry about him. He knew. I didn't have to 7 babysit him. 8 Q. And, again, you never walked the property 9 with him to discuss any of this? 10 A. No. 11 Q. Correct? 12 A. Correct. 13 Q. Do you know if anybody else ever walked it 14 with Rex before he started to work? 15 A. No. 16 Q. And after he did -- did he report back 17 what he did? 18 A. Yeah. I mean, every day we talked, and 19 I'd say, "Hey, did you get that structure out?" 20 And he said, "Yeah, got it out. Got it 21 taken care of." 22 Q. Did you ask to take any pictures? 23 A. No. 24 Q. Do you know if he did take any pictures?</p>	<p style="text-align: right;">Page 84</p> <p>1 he reported back and said, "Hey" -- you know, we 2 discussed every day what happens, and he tells me 3 that he got it taken care of and end of story. 4 Q. Is that as far south as he went in doing 5 that ditch was that concrete structure? 6 A. To the concrete structure and just a 7 little past probably, I'm going to say, maybe 8 50 feet. 9 Q. 50 -- he did what in those 50 feet? 10 A. Removed any silt, anything that was 11 collected on the back side of the structure. 12 Q. Inside the ditch? 13 A. Inside the ditch. 14 Q. He was removing debris or material from 15 the back side of that structure in the ditch? 16 A. Correct. 17 Q. And what did he do with all that, the 18 debris? 19 A. He pulled it up on the west side of the 20 ditch in the area that he had to get into, and he 21 kind of graded it out. 22 Q. Do you know how he got into the property, 23 from which direction? 24 A. Yeah. He got -- come in from the north on</p>
<p style="text-align: right;">Page 83</p> <p>1 A. No. 2 Q. Did you know what equipment he brought 3 with him for that work? 4 A. That would have been a Caterpillar 323 5 excavator. 6 Q. Is that Blankenship Construction 7 equipment? 8 A. Yes, it was. 9 Q. Do you know how long he was on Lucas's 10 property? 11 A. No, I don't. 12 Q. Do you know how long it took him to remove 13 that concrete structure? 14 A. I'm going to guess. I'm going to say 15 maybe four hours. 16 Q. And how do you know that? 17 A. Just by my recollection of seeing the 18 structure, and I kind of know what it takes to do 19 things as far as machine time, and I'm just kind of 20 guesstimating that's what he had in it. Probably 21 around four hours. 22 Q. But he didn't report back to you after 23 that? 24 A. No. I mean, other than, yes, I would say</p>	<p style="text-align: right;">Page 85</p> <p>1 the west side of the ditch. It would have been 2 right down through here like this. 3 Q. Okay. Were you on the Marlen property at 4 all that day when he was doing that work? 5 A. No. 6 Q. Do you guys keep records of how much time 7 is spent on the hour meters on the equipment for a 8 particular job? 9 A. Not off the hour meter. 10 Whenever we go in and we start out the 11 day, they usually get started at 7:00 o'clock. They 12 will work until 3:30. 13 And then we -- I'll ask them -- I'll say, 14 "Okay. What portion was you on?" 15 And he'll say or whomever it may be will 16 say, "Well, I worked on X, Y, Z ditch." 17 And then the next day if they move 18 somewhere else, I'll say, "Well, how much time did 19 you have on that ditch?" 20 So what would have happened here, he would 21 have been on this stretch down through Marlen for 22 probably a couple, three days, getting this cleaned 23 out from that tube going down through there, the 24 existing ditch, and whenever he got down to here, he</p>

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<p style="text-align: right;">Page 86</p> <p>1 took care of the structure. That would have been 2 about the last day that he worked on that side of 3 the farm, I'm assuming, on that -- on that stretch 4 of ditch, because we worked our way through this 5 direction from the north going to the south. 6 Q. Are there records kept of what people did 7 each day? 8 A. No, not on these private projects. 9 Q. It's just a report to you, a verbal 10 report? 11 A. Yeah, yeah. So we make sure that whenever 12 we go to -- in other instances when we invoice, that 13 we can capture the time of the work done. 14 Q. But you didn't make an invoice here? 15 A. No. 16 Q. So you don't have any records of actual 17 work that Rex did on that side of the property -- 18 A. No. 19 Q. -- that day? 20 A. No. 21 Q. You don't even know which day it was? 22 A. No. 23 Q. Okay. So you said that he -- do you know 24 whether he took out some trees while he was on the</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Anywhere from, like, 10- to 12-inch to 2 maybe 16-inch trees, diameter. 3 Q. Right. 4 Do you know what he did with those trees? 5 A. Put them in a pile right there. 6 Q. Why don't you make a little mark on that 7 Exhibit 6. 8 A. And I believe he piled them on Joe at that 9 time, because we did end up removing that pile and 10 cleaning that area up a little bit better. So I 11 know the pile was on Joe. 12 Q. It was on Joe's property that we're 13 seeing? 14 A. Yes. After the fact knowing where the 15 property line was and in discussions when we went 16 back to clean it up and make sure everything was 17 taken care of, we did remove that pile, and I 18 believe we brought it up onto Nate. 19 Q. Now, in your answer in this case, you've 20 said that they were all softwood trees or otherwise 21 valueless hardwoods; is that right? 22 A. Yes. 23 Q. What kind of hardwoods were these? 24 A. I believe there wasn't any hardwoods in</p>
<p style="text-align: right;">Page 87</p> <p>1 way down there on the Lucas property next to that 2 concrete structure? 3 A. Yes. 4 Q. How many did he take out? Do you know? 5 A. I don't know. I'm going to say, 6 recollection wise, when -- I'm going to say probably 7 anywhere from 6 to 12 trees. 8 Q. You said "recollection wise." Did you 9 ever see? 10 A. For me looking at that structure that day 11 and knowing that that machine is going to have to 12 get into there to get this taken care of, there may 13 have been 6 to 12 trees in there that need to be 14 taken out. 15 Q. And you counted those? 16 A. I didn't count them. I'm just assuming. 17 Q. So you don't actually know how many trees? 18 A. There was probably multiple, little trees 19 that was the size of your thumb to your wrist that 20 was behind the structure that we're talking that had 21 grown there that was clogging up the back side of 22 the structure. 23 Q. So when you say it was six to ten trees, 24 those are mature trees?</p>	<p style="text-align: right;">Page 89</p> <p>1 there. 2 Q. You said they were valueless hardwoods. 3 A. Well, the only hardwoods that would be 4 down there is predominantly black oak. That's a 5 hardwood, but black oak is not used for veneer. 6 It's more or less used for blocking material. 7 Q. How do you know which trees were taken 8 down? Is that based only on you standing on 9 Marlen's property and looking at the structure? 10 A. Yes. 11 Q. And how do you know that these hardwoods 12 were valueless? 13 A. Just from past experience being in that 14 area and talking to loggers, and, you know, knowing 15 the variety of trees. And I'm not a logger, 16 so ... 17 Q. Did you see the pile of trees? 18 A. After I met -- yes. The day I met with 19 Joe down there to look at this, I did see the pile 20 of trees. 21 Q. That was a year later? 22 A. Yeah. 23 Q. Now, did Blankenship Construction ever ask 24 Joe Lucas if its folks could enter onto his</p>

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<p style="text-align: right;">Page 90</p> <p>1 property?</p> <p>2 A. I never asked Joe Lucas that, no.</p> <p>3 Q. And why not?</p> <p>4 A. I did not know where the property line was</p> <p>5 at that time. I didn't realize that we was on Joe.</p> <p>6 Q. Now, Nate Marlen has said in this case in</p> <p>7 his interrogatories, similar to the ones that you</p> <p>8 answered -- he said that before the work started,</p> <p>9 you asked specifically who owned the property to the</p> <p>10 south, and he said it was Joe Lucas.</p> <p>11 A. Okay.</p> <p>12 Q. And to give -- and he gave you his phone</p> <p>13 number; is that true?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. So you specifically asked; he said it was</p> <p>16 Joe Lucas and said, "Here's his phone number"?</p> <p>17 A. Right.</p> <p>18 Q. Did you call Joe Lucas?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. I didn't know that I had a reason to at</p> <p>22 that time. I didn't know I was on his property.</p> <p>23 Q. Then why did you ask who owns the property</p> <p>24 to the south?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q. You didn't tell him that before the work</p> <p>2 started?</p> <p>3 A. No.</p> <p>4 Q. You never told him that?</p> <p>5 A. No.</p> <p>6 MR. BLEYER: Wait. Never told him</p> <p>7 that before or never told him that at all?</p> <p>8 THE DEPONENT: I told him that after</p> <p>9 the fact whenever all this -- this came about.</p> <p>10 I said, "Well, you know, I believe I</p> <p>11 do have legal authority to clean and maintain</p> <p>12 drainage."</p> <p>13 To my knowledge. I'm not a lawyer.</p> <p>14 I just heard that in the past.</p> <p>15 BY MR. ST. ONGE</p> <p>16 Q. And that happened after this issue came</p> <p>17 up?</p> <p>18 A. Yes.</p> <p>19 Q. After Joe complained about --</p> <p>20 A. Yes, yes.</p> <p>21 Q. Did you ever determine whether or not you</p> <p>22 did have legal authority?</p> <p>23 A. No.</p> <p>24 MR. DEVORE: Objection. Calls for a</p>
<p style="text-align: right;">Page 91</p> <p>1 A. I believe we had discussions on other</p> <p>2 topics of where Joe owned. You know, I think he</p> <p>3 owned this piece because we was doing other little,</p> <p>4 minor work around the field. And he said Joe</p> <p>5 owns -- I believe up here in this corner. So I</p> <p>6 mean, I kind of wanted to know from the aspect of</p> <p>7 where I'm at, who's where, what. That's basically</p> <p>8 it.</p> <p>9 Q. Because you wanted to make sure that you</p> <p>10 stayed off of somebody else's property, right?</p> <p>11 A. Yes.</p> <p>12 Q. And so you asked him; he gave you the</p> <p>13 name, but you didn't actually call Joe to ask him?</p> <p>14 MR. DEVORE: Objection. You've asked</p> <p>15 this question, like, ten different ways, counsel.</p> <p>16 But go ahead.</p> <p>17 THE DEPONENT: No, I don't believe</p> <p>18 that I actually called Joe to verify where the line</p> <p>19 was at.</p> <p>20 BY MR. ST. ONGE</p> <p>21 Q. In your conversations with Nate, did you</p> <p>22 tell him that you may have legal authority to clear</p> <p>23 the ditch on his property without his permission?</p> <p>24 A. Not prior to the work, no.</p>	<p style="text-align: right;">Page 93</p> <p>1 legal conclusion.</p> <p>2 Go ahead.</p> <p>3 BY MR. ST. ONGE</p> <p>4 Q. Go ahead.</p> <p>5 A. No. I've never, never asked anybody about</p> <p>6 it, particularly other than discussing it with my</p> <p>7 attorney.</p> <p>8 MR. DEVORE: Don't talk about that.</p> <p>9 BY MR. ST. ONGE</p> <p>10 Q. Okay. Was Blankenship Construction ever</p> <p>11 instructed by anybody to go onto Lucas's property?</p> <p>12 A. No.</p> <p>13 (Exhibit 7 was marked for identification.)</p> <p>14 BY MR. ST. ONGE</p> <p>15 Q. I'm handing you what we marked as</p> <p>16 Exhibit 7.</p> <p>17 Do you recognize this document? It's</p> <p>18 titled, "Blankenship Construction and Doug</p> <p>19 Blankenship's Answer to Plaintiff's Complaint."</p> <p>20 A. Yes.</p> <p>21 Q. You've seen this before?</p> <p>22 A. Yes.</p> <p>23 Q. If you go to paragraph 20, on Page 4.</p> <p>24 A. Okay.</p>

24 (Pages 90 to 93)

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<p>1 Q. Paragraph 20 reads: "Defendants admit 2 they removed the old structure, which was impeding 3 the flow of water from the Marlen property, and 4 admit that it was done at the direction of Marlen." 5 Is that true? 6 A. That was -- that was not at the sole 7 direction of Marlen. That was agreed upon between 8 all three of us that it needed to come out. 9 Q. Okay. So he did not direct you is what 10 you're saying now, that he did not direct you to 11 take that out? 12 A. It was basically: "If it needs to come 13 out, we can take it out. I put it in years ago." 14 Q. So this is incorrect then, number 20? 15 A. As it's stated here, yes. I mean, it 16 wasn't a direction from Jim or Nate. It was an 17 agreed upon task. 18 Q. It was an agreed upon task, but it came at 19 your suggestion, correct? 20 A. Yes. 21 Q. And it was agreed by Nate and Joe -- Nate 22 and Jim that it should come out? 23 MR. HASENSTAB: Misstates his prior 24 testimony.</p>	<p>1 Marlen that: "Look. The drainage is better, but we 2 still need to do some more work?" 3 A. Yes. It's kind of like I said before. 4 It's constant maintenance. I mean, you're going to 5 always need to do work. 6 Q. Did you do anything else on that area of 7 Marlen property or on Lucas property to increase the 8 drainage after that time in the summer of 2021? 9 A. Did -- repeat that. 10 Q. Did you do anything -- after removing the 11 structure, did you do anything else on Lucas's 12 property -- 13 A. No. 14 Q. -- to help remove the drainage? 15 A. No. 16 Q. Okay. If you go to Page 7 of Exhibit 7, 17 paragraph 1, the second sentence says "the ditch." 18 Do you see where I am? "The ditch on the Lucas 19 property"? It starts on the third line. 20 A. Oh, right here. Okay. 21 Q. Yeah. 22 A. Yeah. 23 Q. It says, "The ditch on the Lucas property 24 where the old structure was located is within the</p>
Page 95	Page 97
<p>1 BY MR. ST. ONGE 2 Q. Go ahead. 3 A. It was agreed upon that if it is blocking 4 water, and it is causing impedement (phonetic) of 5 water not doing its natural flow down the ditch, 6 they said, "If you think it needs to come out, take 7 it out." 8 Q. So they approved of your recommendation to 9 take it out if it was impeding water? 10 A. They approved, yes, but it was not a 11 directive. 12 Q. But you said it was an agreement? 13 A. It was an agreement. 14 Q. Now, afterwards, did the drainage on 15 Marlen's property improve? 16 A. To an extent, yes. 17 Q. Still a problem, though? 18 A. There's still a problem. 19 Q. Okay. And did Marlen remark that it had 20 improved, but there was still a problem? 21 A. No. 22 Q. That was just something you observed? 23 A. Yes. 24 Q. And did you have any discussions with Nate</p>	<p>1 Vandalia Levee District and under their 2 jurisdiction." 3 So it's your belief the ditch is actually 4 within the Vandalia Levee District's jurisdiction? 5 A. I was -- I was told afterwards that that 6 may be the case. 7 Q. Who told you that? If it was lawyers, 8 just don't answer, but . . . 9 A. No. I believe that that was in 10 conversation with one of the levee district members. 11 Q. Who was that? 12 A. Randy Braun, I believe. 13 Q. This is after the fact you were told this? 14 A. Yeah. And I'm not sure about that, if 15 that -- if that -- I think it was Randy, yes. 16 Q. Okay. And what caused that conversation 17 to come up? Did you call Randy? 18 A. Well, after -- after we cleaned his ditch 19 and everything, I was like, okay, well, I contacted 20 Randy because we was discussing other things when we 21 was working on their projects and told them what we 22 was kind of doing because they was -- we're all 23 farmers down there. Randy Braun is a farmer, too, 24 and we're all concerned about the drainage.</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 98</p> <p>1 And I said, "Yeah," I said, "we're 2 cleaning them trees -- or cleaning the ditch out on 3 Nate on that back side of that levee where that 4 single tube goes through there." 5 And he said, "Oh, you're in that ditch?" 6 I said, "Yeah." 7 He said, "Well, that's probably 8 technically ours." He said, "I don't know if I'm a 9 hundred percent sure, but" he said, "that may be our 10 ditch." 11 And I said, "Well, I cleaned her out for 12 you." He said, "Good deal." 13 Q. Did you tell him what you did? Did you 14 tell him that you removed the structure? 15 A. Not necessarily, no. I just said that we 16 cleaned that ditch down through there, the existing 17 ditch. 18 And I'm thinking discussing that, it was 19 because of all the acreage that flows through that 20 ditch and how we was having trouble getting the 21 water to leave the west -- east side of the levee. 22 Q. And you said you cleaned that ditch down 23 through there? 24 A. Mm-hmm.</p>	<p style="text-align: right;">Page 100</p> <p>1 tube and where we ended, and I didn't exactly tell 2 him where we ended. 3 Q. Let's go to your interrogatories, 4 Number 4. 5 MR. DEVORE: A different exhibit. 6 Number 4. There we go. 7 BY MR. ST. ONGE 8 Q. Page 2, question 2. 9 MR. BLEYER: Which answer? I thought 10 you said 4. 11 MR. DEVORE: Exhibit 4. 12 MR. BLEYER: Oh. Exhibit 4. I am 13 sorry. I thought you said question 4. 14 BY MR. ST. ONGE 15 Q. Number 2, at the very end, you say, "The 16 concrete structure was later determined to be 17 located within the drainage easement of the local 18 drainage district boundaries on the Lucas property." 19 When did you determine that this was 20 located within the drainage easement? 21 A. That was an assumption that it was the 22 levee district's ditch after talking to Randy that 23 it was -- that may or may not be the levee 24 district's.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Is that "yes"? 2 A. Yes. 3 Q. Is that the 50 or so feet that you 4 referenced earlier past the concrete structure that 5 you removed? 6 A. The whole ditch starting from the tube all 7 the way down to where we ended. 8 Q. Okay. So the ditch -- okay. 9 All right. You're talking about the ditch 10 north of Lucas's property? 11 A. Yes. At that time, yes. 12 Q. And he said that may be actually the 13 district's ditch? 14 A. Correct. 15 Q. Did you mention to him how far south you 16 had cleaned it? 17 A. No, huh-uh. 18 Q. So when he told you that that may be the 19 Vandalia Levee District's ditch, that was -- he 20 didn't really have any reference of which portion 21 that you had actually -- 22 A. No. 23 Q. -- cleaned? Is that right? 24 A. No, no. Well, other than starting at the</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Well, it says here it was later determined 2 to be located. 3 A. That -- that was just my wording. I don't 4 know. I may have incorrectly stated that. We don't 5 know at this point if it is or it isn't. Nobody 6 said, "Yes, it is." 7 Q. Well, in your answer, you said it was 8 located within the levee district, and here you're 9 saying it's on a drainage easement. 10 A. It is within the levee district. The 11 whole entire bottom is in the levee district. 12 Q. Well, you're saying here that it was on an 13 easement. 14 A. Not an easement. I don't know any kind of 15 an easement. I wouldn't be privy to that. 16 Q. Well, that's your answer. 17 A. I understand that, but that's 18 probably -- I didn't know what I was saying at that 19 point in time. 20 Q. Okay. And you signed these under oath, 21 right? 22 A. Sure, yes. 23 Q. You're saying it still hasn't been -- 24 A. I'm just trying to answer these the best I</p>

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<p style="text-align: right;">Page 102</p> <p>1 can, you know, off of a piece of paper.</p> <p>2 Q. Well, I understand, but you reviewed it,</p> <p>3 right?</p> <p>4 A. Right.</p> <p>5 Q. These are your words?</p> <p>6 A. Right. So I don't know if</p> <p>7 there's -- still at this point if there's an</p> <p>8 actual -- if that is a levee district's easement or</p> <p>9 a levee district's property or under their</p> <p>10 jurisdiction.</p> <p>11 Q. Or completely outside of their</p> <p>12 jurisdiction?</p> <p>13 A. I don't know at this point.</p> <p>14 Q. You don't know one way or the other?</p> <p>15 A. Right, because in conversation with the</p> <p>16 levee district, they say it may or may not be.</p> <p>17 Q. And you don't have any survey to support</p> <p>18 any of this, right?</p> <p>19 A. No surveys.</p> <p>20 Q. All right. So your understanding that</p> <p>21 this may be on the levee district's easement or</p> <p>22 within the district comes from your conversation</p> <p>23 with Randy Braun?</p> <p>24 A. Right. I was assuming that because it</p>	<p style="text-align: right;">Page 104</p> <p>1 A. No. I just assumed that.</p> <p>2 Q. Okay. And the next says, "Defendants had</p> <p>3 legal authority to take such acts under Section 211</p> <p>4 of the drainage code and or the common law as</p> <p>5 recognized in such cases as . . ."</p> <p>6 Do you have any -- what's your basis for</p> <p>7 saying that?</p> <p>8 A. I don't know that I -- that would have</p> <p>9 been something the attorney would have put in there.</p> <p>10 I don't -- I'm not -- I don't know those numbers,</p> <p>11 no. I don't even know that case law. I wouldn't</p> <p>12 have looked that up.</p> <p>13 Q. Okay. That's fine.</p> <p>14 Do you know if the ditch on the portion of</p> <p>15 Lucas's property, was that built by the agreement of</p> <p>16 the adjoining landowners at some point?</p> <p>17 A. I have no idea. That's been there for</p> <p>18 ages.</p> <p>19 Q. Okay. And you don't know who built it?</p> <p>20 A. No.</p> <p>21 (Exhibit 8 was marked for identification.)</p> <p>22 BY MR. ST. ONGE</p> <p>23 Q. Number 8 is a letter from Silver Lake</p> <p>24 Group to Jon Bierman from Erik Hyam. Have you seen</p>
<p style="text-align: right;">Page 103</p> <p>1 was -- you know, runs down along the levee that is a</p> <p>2 levee district's property. Well, that would be the</p> <p>3 easement would be the levee.</p> <p>4 Q. And you didn't discuss with Randy or</p> <p>5 anybody else in the district before this concrete</p> <p>6 structure was removed?</p> <p>7 A. No.</p> <p>8 Q. When Randy told you that this was actually</p> <p>9 the -- this area here that you cleared, that this</p> <p>10 ditch may have been within their jurisdiction, did</p> <p>11 you ask them, like: "Well, could you pay me for it</p> <p>12 then?"</p> <p>13 A. No, because I only performed the work not</p> <p>14 knowing that it may or may not be. I was actually</p> <p>15 performing that work underneath the guise of trying</p> <p>16 to help the drainage on the Marlen farm.</p> <p>17 Q. Let's go back to your answer, which is</p> <p>18 Exhibit 7, Page 7.</p> <p>19 Okay. And the paragraph 1 after the</p> <p>20 sentence that we read together before, it says, "The</p> <p>21 10 to 12 trees removed by Defendants were also</p> <p>22 contained within the levee district's ditch."</p> <p>23 Is that based on your conversation with</p> <p>24 Randy Braun as well?</p>	<p style="text-align: right;">Page 105</p> <p>1 this before?</p> <p>2 A. I don't believe so.</p> <p>3 Q. Silver Lake Group, that's your lawyers?</p> <p>4 A. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. I may have, but it's been a while. I</p> <p>7 can't recall.</p> <p>8 Q. And I want to bring your attention</p> <p>9 to -- this was sent, I mean, while they were</p> <p>10 representing you, right?</p> <p>11 A. Okay.</p> <p>12 Q. November 23rd of 2022?</p> <p>13 A. Yes.</p> <p>14 Q. They were representing you at that point?</p> <p>15 A. Yes.</p> <p>16 Q. The second paragraph, fifth line down, it</p> <p>17 says, "The ditch repaired was constructed decades</p> <p>18 ago by the Vandalia Levee District."</p> <p>19 You don't know whether that's true or not;</p> <p>20 is that right?</p> <p>21 A. No, I don't know if that's true or not.</p> <p>22 I'm assuming that that was -- I don't even know when</p> <p>23 the Vandalia Levee District was formed. This may</p> <p>24 have been prior to that. It may have been a</p>

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<p style="text-align: right;">Page 106</p> <p>1 federal.</p> <p>2 Q. You're just guessing?</p> <p>3 A. I'm just -- yeah, because the whole thing</p> <p>4 is in a levee district.</p> <p>5 Q. Okay. Go back to your answer, number 1.</p> <p>6 It says, "The concrete structure was in</p> <p>7 such a state of disrepair that it was impeding the</p> <p>8 natural flow of water on the Marlen property and the</p> <p>9 other property which may have been upstream."</p> <p>10 And then the very end, you say that it was</p> <p>11 done for the sole purpose of returning and</p> <p>12 preserving the natural flow of water drainage.</p> <p>13 Is that still your contention?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the basis for saying that</p> <p>16 the -- did you see the natural flow beforehand?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And was there water on the south</p> <p>19 side of the property -- of the Marlen property, pool</p> <p>20 of water?</p> <p>21 A. There's a pool of water there now.</p> <p>22 Q. Do you know if that is because of rainfall</p> <p>23 or if that's because of the intentional manmade</p> <p>24 flooding; what?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I believe we said -- I said, "Hey. I</p> <p>2 apologize if we got on you. I didn't know it." I</p> <p>3 said, "I'd like to meet with you to discuss to see</p> <p>4 how we can make things better," trying to, you know,</p> <p>5 ruffle -- or trying to smooth some feathers that had</p> <p>6 been ruffled.</p> <p>7 Q. Did he tell you that -- you know, that you</p> <p>8 had widened and deepened his ditch?</p> <p>9 A. I can't remember at that time.</p> <p>10 Q. You don't know whether he said that or</p> <p>11 not?</p> <p>12 A. He just said, "I believe you entered on my</p> <p>13 property. You didn't have permission."</p> <p>14 And I'm like, "Yes, I understand that.</p> <p>15 I've done that now, and, you know, sorry about it.</p> <p>16 Let's try and get together and discuss it."</p> <p>17 Q. Did you ask him if the banks of the ditch</p> <p>18 had gotten too high as a result of what you did on</p> <p>19 the property?</p> <p>20 A. No. I didn't -- I didn't know anything.</p> <p>21 I didn't know how it looked until I met with him</p> <p>22 that day.</p> <p>23 Q. So all he told you on the phone that time</p> <p>24 was that you entered on his property, and you said,</p>
<p style="text-align: right;">Page 107</p> <p>1 A. The ditch that runs down through there</p> <p>2 that we cleaned out runs onto Joe. The part that we</p> <p>3 did not go any further, where we quit from thereon,</p> <p>4 there is a pool of water in the timber that the</p> <p>5 ditch flows into.</p> <p>6 Q. So you don't know what caused that water</p> <p>7 to pool?</p> <p>8 A. Blockage.</p> <p>9 Q. Okay. But from rainwater?</p> <p>10 A. River water, rainwater.</p> <p>11 Q. Natural-occurring water?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. So that work was done in the spring</p> <p>14 or summer of 2021. Did Joe Lucas then call you and</p> <p>15 complain about what you had done on his property?</p> <p>16 A. Actually, the way it happened was</p> <p>17 Nate -- I believe Nate and Joe had a conversation,</p> <p>18 and Nate said that Joe was upset.</p> <p>19 And I said, "Well, I'll give him a call or</p> <p>20 give me his phone number."</p> <p>21 And I called Joe at that point in time to</p> <p>22 set up a meeting to discuss it.</p> <p>23 Q. And what did you say with him on the</p> <p>24 phone? What did you guys talk about on the phone?</p>	<p style="text-align: right;">Page 109</p> <p>1 "Okay. Let's get together"?</p> <p>2 A. Pretty much.</p> <p>3 Q. He didn't make any specific statements to</p> <p>4 you about widening the ditch, making it deeper?</p> <p>5 A. I don't believe. I don't know. I can't</p> <p>6 remember.</p> <p>7 Q. Okay. So did you get -- did you promise</p> <p>8 on the phone that you would fix what you did?</p> <p>9 A. I said, "Let's have a meeting. Let's go</p> <p>10 look at it, and we'll discuss it there."</p> <p>11 Q. Okay. And then did you meet with him</p> <p>12 later?</p> <p>13 A. Yes.</p> <p>14 Q. And who was -- did you meet with him on</p> <p>15 his property?</p> <p>16 A. Correct.</p> <p>17 Q. Who else was at that get-together?</p> <p>18 A. John Cripe.</p> <p>19 MR. BLEYER: John who? I'm sorry.</p> <p>20 THE DEPONENT: Cripe.</p> <p>21 MR. BIERMAN: C-R-I-P-E.</p> <p>22 MR. BLEYER: Thank you.</p> <p>23 THE DEPONENT: I can't remember the</p> <p>24 other gentleman's name, but they call him "Jimmer."</p>

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<p style="text-align: right;">Page 110</p> <p>1 I'm sorry. I can't remember his name. 2 BY MR. ST. ONGE 3 Q. Was Don Gardner there? 4 A. Yes. 5 Q. So it was you; it was Joe Lucas; John 6 Cripe; and Don Gardner? 7 A. Correct. 8 Q. Did you meet -- where did you get together 9 to meet to go to the property? 10 A. We actually drove onto the levee on the 11 south side adjacent to Joe's property, walked up the 12 levee, jumped down across the levee onto Joe's 13 property and went -- come in to look at the ditch 14 from the south side; the river side, I'll call it. 15 Q. Tell me what you discussed during that 16 time that you were together on the Lucas property. 17 A. Well, Joe was upset that we entered on his 18 property. 19 And he said -- basically he said, "You 20 know, you guys kind of left a mess there," and this, 21 that, and the other. 22 Q. Well, "this, that, and the other," is that 23 what he said, or is that what you're summarizing 24 what he said?</p>	<p style="text-align: right;">Page 112</p> <p>1 property. I said, you know -- no, I did not tell 2 him that was a directive from Nate. 3 Q. You didn't say, "I'm just doing what Nate 4 told me to do"? 5 A. I said -- no. 6 I said, "You know, we removed this 7 structure. Jim said that it was put in there years 8 ago. He said that if you think it needs to be 9 pulled out, pull it out." 10 And I said, "Well, I'm going to pull it 11 out because it's blocking drainage." 12 Q. Did he tell you at any point that you had 13 expanded the ditch so much that he couldn't get his 14 four-wheeler across to enter his property? 15 A. Yes. He said that he's having trouble 16 getting across the ditch. 17 And I said, "Well, let's go look at it." 18 We looked at it. Where I stopped cleaning 19 the ditch out, there was tracks in the ditch where I 20 had not been by a side-by-side that went across 21 there. Beyond south of that was a whole bunch of 22 corn stalks and trash and debris that was piled up 23 in front of this pooled-up area. 24 Q. Did you ever --</p>
<p style="text-align: right;">Page 111</p> <p>1 A. He said, "You left the trees all -- the 2 dirt that was pulled out, you know, from cleaning 3 the ditch out was not smoothed down." 4 And, you know, he was just upset that we 5 entered on his property and did this work without 6 his permission. 7 Q. Okay. 8 A. I said, "How do we get this taken care 9 of?" 10 Q. Did he tell you that you had widened and 11 expanded his ditch? 12 A. No, not to that point, I don't believe. 13 Q. Did he ever tell you that during that 14 meeting? 15 A. I don't think so. I don't recall it. 16 Q. But he told you that he was upset that you 17 had taken dirt from the ditch and piled it up and 18 not leveled it? 19 A. Yes. The mess from removing the silt and 20 stuff from the ditch was up here, and I'll admit it 21 was not leveled off and presentable, nice. 22 Q. Did you apologize to him and tell him that 23 you were just following what Nate told you to do? 24 A. I apologized to him for entering on the</p>	<p style="text-align: right;">Page 113</p> <p>1 A. And he mentioned that the corn stalks, the 2 trash is all piled up. 3 He said, "Look at that." I said, "Well, 4 there's not much I can do about that. That's going 5 to happen." 6 I said, "What do we got to do to take care 7 of this?" I said -- he said, "Well, I'd like to 8 have a crossing in there." 9 I said, "Well, you know, I can take care 10 of that. I've got pipes in the yard and stuff like 11 that." 12 I said, "What we'll do is we'll bring some 13 pipes down, put them in the ditch, and we'll clean 14 the area up and -- presentable." 15 Q. Did you ever specifically deny that you 16 had expanded and widened his ditch? 17 A. I don't think. I don't know. I don't 18 know if I did or not. I just cleaned out the 19 existing ditch. 20 Q. Did you promise to build him three 21 crossings on his property across the ditch so he 22 could get to his property? 23 A. One. 24 Q. You offered to build him one crossing?</p>

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<p style="text-align: right;">Page 114</p> <p>1 A. Yes.</p> <p>2 Q. Where?</p> <p>3 A. Pretty much right where we was looking</p> <p>4 where the four-wheeler had went through or just at</p> <p>5 the end of where we cleaned the ditch, somewhere in</p> <p>6 that neighborhood.</p> <p>7 Q. And you never offered to build him a</p> <p>8 crossing over by the pond south -- the south side of</p> <p>9 the ditch?</p> <p>10 A. No. You can't even get in there. It's</p> <p>11 fully wooded.</p> <p>12 Q. Did you ever offer to do anything else to</p> <p>13 fix the property?</p> <p>14 A. Other than put this -- the crossing in,</p> <p>15 was to clean up the area where we had been, level it</p> <p>16 off, and then remove the brush pile, I believe, and</p> <p>17 we drug the brush pile up to the Marlen farm.</p> <p>18 Q. "Brush pile," meaning the trees that Rex</p> <p>19 had taken out?</p> <p>20 A. Yes.</p> <p>21 Q. You saw those trees stacked up on the</p> <p>22 property when you visited it?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Did you bother to count how many were</p>	<p style="text-align: right;">Page 116</p> <p>1 A. No.</p> <p>2 Q. Okay. And you never told Joe that you're</p> <p>3 going to do this: "Okay. If all is forgiven, and</p> <p>4 you don't, you know, come after me for legal work,</p> <p>5 for legal action"?</p> <p>6 A. No, we never even discussed that.</p> <p>7 Q. Did you tell Joe that you needed to talk</p> <p>8 with Nate Marlen before you did any of this work?</p> <p>9 A. No.</p> <p>10 Q. Did you tell him that Nate Marlen was</p> <p>11 going to be paying for this so you needed to run the</p> <p>12 bills past him and run the estimate past him first?</p> <p>13 A. Nate Marlen didn't pay for that. I did</p> <p>14 that on my own.</p> <p>15 Q. But did you tell Joe that Nate was going</p> <p>16 to be paying for it?</p> <p>17 A. No. I was going to do that on my own.</p> <p>18 Q. Did you discuss any of the proposal for</p> <p>19 making the crossing and taking out the debris? Did</p> <p>20 you discuss any of that with Nate?</p> <p>21 A. No.</p> <p>22 Q. Okay. So you said that you saw the</p> <p>23 concrete structure from standing on the Marlen</p> <p>24 property looking over at the structure about</p>
<p style="text-align: right;">Page 115</p> <p>1 there?</p> <p>2 A. No.</p> <p>3 Q. I'm going to ask you to go to your</p> <p>4 interrogatory answer, which is Exhibit 4.</p> <p>5 MR. DEVORE: When we get to a good</p> <p>6 breaking point, I've got to use the restroom.</p> <p>7 MR. ST. ONGE: That's fine.</p> <p>8 MR. DEVORE: Thank you very much,</p> <p>9 sir. I appreciate that.</p> <p>10 (A short break was taken.)</p> <p>11 BY MR. ST. ONGE</p> <p>12 Q. So we were talking about you agreed to</p> <p>13 build him a crossing on his property to allow him to</p> <p>14 cross the ditch and get to the rest of the land; is</p> <p>15 that right?</p> <p>16 A. Right, yes.</p> <p>17 Q. And you did this because you wanted to be</p> <p>18 neighborly, right?</p> <p>19 A. Try to right any wrongs that was done on</p> <p>20 Joe's property, yes.</p> <p>21 Q. You wanted to be neighborly?</p> <p>22 A. Yes.</p> <p>23 Q. Now, it wasn't because you were trying to</p> <p>24 settle some debt with Joe, right?</p>	<p style="text-align: right;">Page 117</p> <p>1 200 feet away. That's the only time you saw</p> <p>2 that -- that structure -- right?</p> <p>3 A. In person, yes.</p> <p>4 Q. Okay. And so you're standing there. This</p> <p>5 is in the spring?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And so you're saying you can see</p> <p>8 the structure from where you're standing, and can</p> <p>9 you also see the ditch?</p> <p>10 A. Yeah. There was a little bit of a clear</p> <p>11 ditch north of the structure.</p> <p>12 Q. How about south of the structure?</p> <p>13 A. I couldn't really see south of the</p> <p>14 structure.</p> <p>15 Q. And as far as the work that Rex did, you</p> <p>16 didn't supervise him --</p> <p>17 A. No.</p> <p>18 Q. -- at the time, right?</p> <p>19 A. No.</p> <p>20 Q. You took his word for it that he did the</p> <p>21 right thing?</p> <p>22 A. Right.</p> <p>23 Q. You didn't go inspect his work afterwards?</p> <p>24 A. The only time is when I met with Joe.</p>

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<p style="text-align: right;">Page 118</p> <p>1 Q. And did you -- how much time did you spend</p> <p>2 south of where that structure was in the ditch?</p> <p>3 MR. BLEYER: After meeting with Joe</p> <p>4 or what?</p> <p>5 MR. ST. ONGE: Yes, at the time he</p> <p>6 was meeting with Joe.</p> <p>7 THE DEPONENT: Okay. We was there,</p> <p>8 I'm going to assume, maybe 30, 45 minutes talking it</p> <p>9 over.</p> <p>10 BY MR. ST. ONGE</p> <p>11 Q. Over the whole course of the time? You</p> <p>12 were there on the property 30 to 45 minutes?</p> <p>13 A. With Joe.</p> <p>14 Q. Okay, but you weren't just at that</p> <p>15 concrete -- where that concrete structure was? You</p> <p>16 were walking all along the property, right?</p> <p>17 A. Just along the ditch.</p> <p>18 Q. Okay. And including down by the pond?</p> <p>19 A. We came in past the pond to get to the</p> <p>20 ditch area.</p> <p>21 Q. Okay. And so you can't tell exactly what</p> <p>22 it is that Rex did based upon being there, right?</p> <p>23 A. Yeah, I looked. I looked at the ditch</p> <p>24 work he did do, and I could tell what he did.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Take these tubes down there, put them in</p> <p>2 the ditch, establish them a nice crossing, put some</p> <p>3 dirt over it, clean that area up, take care of it.</p> <p>4 Q. Okay. And what machines did you</p> <p>5 use -- did they use for that?</p> <p>6 A. An excavator.</p> <p>7 Q. Do you know where that crossing was</p> <p>8 erected?</p> <p>9 A. I'm assuming it was per Joe and I's</p> <p>10 discussion. I'm assuming. Now, I did not go back</p> <p>11 and look at it, the crossing. I've not seen it</p> <p>12 since.</p> <p>13 Q. Well, you've never seen it?</p> <p>14 A. I've never seen it, not the one that we</p> <p>15 put in for Joe, okay? I've never seen it. I'm</p> <p>16 assuming that it was south of the old original</p> <p>17 concrete structure.</p> <p>18 Q. Do you know how far south?</p> <p>19 A. I'm just -- at this point, I'm assuming.</p> <p>20 Q. And how did Rex and Barry know where to</p> <p>21 build that?</p> <p>22 A. Well, I said -- well, I said, "Don't go</p> <p>23 any further south in which we -- when we cleaned out</p> <p>24 the ditch." I said, "Put it north of that</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. You said that you just saw some debris all</p> <p>2 over the place, that he had -- did not do a very</p> <p>3 good job of leveling it, right?</p> <p>4 A. There was a brush pile and some unlevel</p> <p>5 ground on the adjacent side, west side of the ditch</p> <p>6 where he had been to clean out the ditch.</p> <p>7 Q. How far from where that structure was?</p> <p>8 A. 75, 80 feet, just guessing.</p> <p>9 Q. So did you perform the repair work, the</p> <p>10 crossing and the debris removal, afterwards for Joe?</p> <p>11 A. Rex -- I informed Rex to do that, along</p> <p>12 with Barry Matthews, who helped Rex install the tube</p> <p>13 in the ditch, and then Rex used the machine to cover</p> <p>14 the tube up and clean up. As we worked our way back</p> <p>15 towards Marlen side, we cleaned everything up and</p> <p>16 pulled the pile out. I wasn't physically there</p> <p>17 overseeing it.</p> <p>18 Q. The pile of trees?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. So did you tell Rex and Barry</p> <p>21 exactly what to do?</p> <p>22 A. Yes.</p> <p>23 Q. And what was it that you told them exactly</p> <p>24 what to do?</p>	<p style="text-align: right;">Page 121</p> <p>1 someplace."</p> <p>2 So in other words, where we ended --</p> <p>3 Q. When you were -- you had cleaned out the</p> <p>4 ditch, and you said go up 80 feet?</p> <p>5 A. Upstream north and put the crossing in</p> <p>6 there, and that's where Joe and I discussed was, you</p> <p>7 know, when we first walked up there, there was</p> <p>8 tracks across the ditch with the side-by-side where</p> <p>9 we hadn't even been.</p> <p>10 Q. There were tracks across the ditch. You</p> <p>11 don't know where that was in relation to where the</p> <p>12 concrete structure was?</p> <p>13 A. It was south.</p> <p>14 Q. How far south?</p> <p>15 A. Probably 100, 150 feet.</p> <p>16 Q. Okay.</p> <p>17 A. So someone had been down through there</p> <p>18 where we had not cleaned out the ditch and crossed</p> <p>19 the ditch with a side-by-side.</p> <p>20 When he said, "I can't cross there," I'm</p> <p>21 sitting there looking at tracks.</p> <p>22 Q. Did you say, "Hey, well, you said you</p> <p>23 can't cross. Whose are these?"</p> <p>24 A. I wasn't going to be arguing at that</p>

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<p style="text-align: right;">Page 122</p> <p>1 point. My goal right then and there was to make him 2 happy so that everything would just be okay. 3 I said, "Well" -- and then he said and 4 made mention of the corn stalks had piled up even 5 further south than that. And I said, "Well, there's 6 not much I can do about that." 7 Q. So it was 150 feet south down the ditch 8 from the concrete structure where you saw those 9 tracks? 10 A. Approximately. 11 Q. Do you know where that crossing was put 12 up, like, in relation to the concrete structure? 13 A. No, I don't know. I don't know an exact 14 measurement. 15 Q. You said you got two tubes. What are we 16 talking? How big a diameter are these tubes? 17 A. I want to say they're probably a 24-inch, 18 maybe a 30-inch. 19 Q. What are they made out of? 20 A. Plastic. 21 Q. What do you typically use these for? 22 A. Drainage. 23 Q. Okay. 24 A. Culverts for drainage.</p>	<p style="text-align: right;">Page 124</p> <p>1 their word for it and -- done. 2 Q. Do you know whether that crossing has 3 maintained its place over there? 4 A. No. No, I do not know. 5 Q. You don't know if it's collapsed or 6 anything? 7 A. No, no. 8 Q. Because you haven't been out to check it? 9 A. No. I figured if I -- if there was 10 something wrong with it, I would have -- Joe would 11 have called me and said, "Hey, this thing is no 12 longer usable." 13 Q. Did you tell Joe in advance of when you'd 14 be coming out there? 15 A. I told him that we would try and get it 16 when we get back in the field because it was muddy 17 at that time. It was late February, I believe. 18 I said, "When we -- we'll get it in before 19 we -- as we're going out with the crops, planting 20 crops. We'll get it in before we do that, which 21 would be somewhere April-ish." 22 Q. So in a couple of months? 23 A. Yes. 24 Q. And what did he say?</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. And you've got two of them that you just 2 had -- where did you get them? 3 A. They was on -- we had gotten them off the 4 job site somewhere, that they had extras that we 5 brought back to the yard. 6 Q. Were these new or used? 7 A. They would have probably been new, but 8 they may have been cut off or who knows. Just extra 9 pieces. 10 Q. And did you direct Rex exactly what to do 11 with these tubes? 12 A. Rex and Barry, yes. 13 Q. Okay. And what did you tell them to do? 14 A. To put them in the ditch. 15 Q. Connect them? 16 A. Join them up, and I believe they even 17 bolted them together, if I'm not mistaken, is what 18 Barry told me, and then put the dirt back over the 19 top of the tube to make the crossing. 20 Q. This is what you instructed them to do? 21 A. Yes. 22 Q. And you never went back out to see if it 23 had been done? 24 A. No. They said they got it done. I took</p>	<p style="text-align: right;">Page 125</p> <p>1 A. He said, "That would be fine." 2 Q. Before your guys went out there to make 3 the actual -- the crossing, did you give him -- Joe 4 any advance notice that they'd be out there? 5 A. I don't believe, no. 6 Q. Did you ask Rex: "Hey, just give Joe a 7 heads-up when you come out there"? 8 A. No. Rex wouldn't have had any way of 9 getting ahold of Joe. 10 Q. Did you say, "Hey, let me know, and I'll 11 contact Joe"? 12 MR. DEVORE: Asked and answered, 13 like, four times. 14 Go ahead. 15 THE DEPONENT: So, no. I mean, I 16 just told Rex and guided Rex and Barry on what to do 17 and sent them out there before we got into the field 18 with crops because I wanted to get that done before 19 we had crops in the field. 20 BY MR. ST. ONGE 21 Q. After it was done, did you call Joe and 22 say, "Hey, we made it. Let's -- come out and take a 23 look and see what you think"? 24 A. I don't believe so, no.</p>

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<p style="text-align: right;">Page 126</p> <p>1 Q. Read your answer, if you've got it open 2 there. 3 If you go to Page 7 -- sorry -- Page 8, 4 you say that "Defendants performed each and every 5 request of Plaintiff to his satisfaction, all at 6 substantial cost to the Defendants and none to 7 Plaintiffs." 8 How do you know that Joe was satisfied 9 with the crossing that you built him? 10 A. I don't know that he was actually 11 satisfied, no. I did what we -- I assumed we did 12 what we discussed. 13 Q. But you had no discussions with Rex or 14 Barry and never went to go look at it yourself? 15 A. No, I did not. 16 Q. What was the cost to Blankenship 17 Construction of preparing this crossing? 18 A. An estimate? 19 Q. Well, you say it was a substantial cost. 20 I want to know what you mean by "substantial" in 21 your answer. 22 A. I mean, by the time we ended up getting 23 the tubes and deliveries and the hoe and everything 24 else, I mean, you may be looking at \$3,500, \$5,000.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. No, I do not. 2 Q. And going back to your answer, you said 3 that it was done at no benefit to you; is that 4 right? That crossing didn't create any benefit for 5 you, for Blankenship Construction? 6 A. As in the sense of I was hoping that it 7 was going to benefit in making sure everybody's 8 feelings was okay, and we appeased everybody. 9 Q. But I mean, the tube allows water to 10 continue to flow through there, right? 11 A. Right, no. It was -- at that point, it's 12 really not a benefit to Blankenship Construction, 13 not to Blankenship Construction at all. To Triangle 14 Grain, it is probably not a benefit whatsoever 15 because that's eventually going to probably block up 16 traction and cause drainage problems, but I did it 17 anyway to make Joe happy. 18 Q. Because you wanted to be neighborly? 19 A. I wanted to be neighborly. 20 Q. So at the time that Blankenship 21 Construction built that crossing, did it do anything 22 else on Lucas's land? 23 A. Other than cleaning up where we had been 24 previously?</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. The tubes were free, right? 2 MR. DEVORE: Objection. 3 BY MR. ST. ONGE 4 Q. Yes? The tubes were free? 5 MR. DEVORE: Lack of foundation. 6 THE DEPONENT: They wasn't free, no. 7 We paid for them at some point in time on a job 8 site. So I mean, they was still -- had been 9 purchased by Blankenship Construction. 10 BY MR. ST. ONGE 11 Q. Did you pass that cost on to the customer 12 that you bought it for? 13 A. To -- depending on the job, that would 14 have been in the bid. 15 Q. Okay. 16 A. So if they was used on the job site or 17 not, then they would have come back to the yard. 18 Q. Can you tell me how much they cost? 19 A. I don't even know what the size of it was 20 we put in the ditch. So I'm just going to rough 21 guess a 30-inch and 12 dual-wall plastic culvert per 22 foot is probably going to be somewhere in the 23 neighborhood of \$40, \$45 a foot. 24 Q. Do you know how long they were?</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. Right. 2 A. That's it. 3 Q. Okay. Did you plant seed? 4 A. I can't remember if they threw some 5 grass seed down or not. 6 Q. And those trees that had been taken down 7 from when Rex took out the concrete structure and 8 cleaned out that ditch, what had happened to those 9 trees when Rex and Barry came back? 10 A. I believe we had them pull those trees out 11 and move them up to the Marlen farm and get 12 them -- the mess off of Joe. 13 Q. And you don't know where they are today? 14 A. They're probably -- they're stacked up 15 next to the existing ditch or may have been burnt. 16 I'm not sure what's happened to them. I don't 17 remember. 18 Q. Did you ask Joe when he wanted -- whether 19 he wanted them? 20 A. No. 21 In the discussion, I said, "We'll get 22 these pile of trees cleaned up. We'll pull it up 23 there. We'll pull it up on Nate's farm. Get it out 24 of here and clean things up and make it look nice."</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. You didn't ask him: "Do you want these 2 trees?" 3 A. I didn't ask him, no. 4 I said, "Will that make you happy?" 5 Q. Did you plant any trees on the area 6 that -- 7 A. No. 8 Q. -- you had cleared earlier? 9 A. No. 10 Q. Did Blankenship Construction dig a new 11 ditch at that point when it was creating the 12 crossing? 13 A. No. I don't believe so, no. 14 Q. Did you talk with Rex about that? 15 A. No. 16 Q. So you don't know whether he did or not? 17 A. No. 18 Q. Are you aware of a ditch that connects the 19 Marlen's property to the ditch that's on his 20 property where the crossing was built, separate 21 ditch? 22 A. No. Rephrase that. 23 MR. DEVORE: I lost that. 24 MR. BIERMAN: Say "Lucas property."</p>	<p style="text-align: right;">Page 132</p> <p>1 BY MR. ST. ONGE 2 Q. If you look, do you recognize this 3 document, Blankenship Construction's disclosures? 4 A. Yes. 5 Q. Okay. If you go to Page 2, under that 6 bold heading, it says, "The name, and, if known, the 7 address and telephone number of each individual 8 likely to have discoverable information -- Defendant 9 may use to support his claim to defenses." 10 You list Joe Lucas, John Cripe, Doug 11 Blankenship, Marlen, James Berner. 12 A. That may have been Jimmer -- Don. We may 13 have got that name wrong. 14 MR. DEVORE: What's his real name? 15 Jimmer? 16 THE DEPONENT: That's his nickname. 17 BY MR. ST. ONGE 18 Q. Is it Don Gardner? 19 A. Yes. 20 MR. DEVORE: Okay. Don Gardner. 21 MR. BIERMAN: For the record, let's 22 be clear. They are two different people. 23 MR. DEVORE: Yes. 24 ///</p>
<p style="text-align: right;">Page 131</p> <p>1 BY MR. ST. ONGE 2 Q. Okay. On the Lucas property, there's a 3 ditch, and you built a crossing over that ditch, 4 correct? 5 A. The main ditch? 6 Q. Yes. 7 A. Yes. 8 Q. Is there a new ditch that was created on 9 Lucas's property that connects the Marlen property 10 to the Lucas property going between them? 11 A. Other than the main ditch? 12 Q. Correct. 13 A. I don't know. I don't think so. I don't 14 know. I haven't been back there. 15 Q. You haven't been back since Rex and Barry 16 built that crossing? 17 A. Yes. I have not been back there. 18 Q. Who is James Berner? It was identified in 19 your interrogatory. Do you know who that is? 20 A. James? 21 Q. Yeah. 22 A. Berner? 23 Q. Yeah. 24 (Exhibit 9 was marked for identification.)</p>	<p style="text-align: right;">Page 133</p> <p>1 BY MR. ST. ONGE 2 Q. You don't know who James Berner is? 3 A. No. 4 Q. You don't know whether he goes by 5 "Jimmer"? 6 A. Yeah. 7 Q. Don Gardner goes by "Jimmer"? 8 A. Yes. I later found that out. That was 9 the first time I met that gentleman. 10 Q. You said that you have text messages with 11 Nate Marlen. Do you have those on your phone? Can 12 you pull those up just to see if you have them? 13 A. [Deponent indicated.] 14 Q. I don't need them now. I'm just going to 15 ask you to preserve those, and we'll ask you to get 16 those to us later. 17 A. Okay. That -- 18 MR. DEVORE: Make sure they're still 19 there, though, Doug, before you -- 20 THE DEPONENT: That's a good-looking 21 car right there. 22 MR. ST. ONGE: So we've got text 23 messages there. 24 MR. DEVORE: It looks like there's</p>

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<p>1 something from Mr. Marlen. I don't know how far 2 back it goes. 3 BY MR. ST. ONGE 4 Q. And you communicated with Nate Marlen 5 regarding the property that's north of Joe Lucas's, 6 correct? 7 A. The property? 8 Q. You communicated with him for work stuff, 9 right? 10 A. When we're either planting -- farming on 11 his farm or we're doing work on his farm, yes, I 12 communicate. 13 Q. Okay. And how far back are those 14 messages? How far back do they go? 15 MR. DEVORE: Is that it? 16 THE DEPONENT: Yes, that's the last 17 one. 18 MR. DEVORE: What year is that in? 19 THE DEPONENT: 2023. 20 MR. DEVORE: February 28th. 21 BY MR. ST. ONGE 22 Q. What's the date? How far back does it go? 23 A. February 28th of 2023. 24 MR. ST. ONGE: Okay. Well, I'll ask</p>	<p>1 Q. I'm Joe Bleyer, and we represent -- Dan 2 and I represent Nate Marlen in this litigation. 3 When I refer to the Marlen property, it's 4 the farm north of the Lucas property. Do you 5 understand that? 6 A. Yes. 7 Q. Okay. That Nate -- that Marlen property, 8 you have a farming contract with it, with that 9 property? 10 A. Yes. 11 Q. And who is the contract with? 12 A. It's with -- between Triangle Grain 13 Incorporated and the Marlen Family Trust. 14 Q. Okay. And when I assume you first started 15 working or farming this property, it was with the 16 Marlen Family Trust? Is that your first contract? 17 A. I believe. I don't know, because at that 18 time, I believe Jim was still alive. So I don't 19 know if it was with Jim. I can't remember if it was 20 Jim or the family trust. I don't know at this 21 point. 22 Q. Do you know if the property was in a 23 family trust while Jim was living? 24 A. I do not know that.</p>
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<p>1 to get those, and we'll ask you to produce the lease 2 that you have with Nate Marlen for that property. 3 THE DEPONENT: Yes. 4 MR. BLEYER: The lease with Marlen 5 Farms or -- 6 MR. DEVORE: The trust with Triangle 7 Grain. 8 MR. BIERMAN: Let's take a break. 9 MR. DEVORE: Break? 10 MR. BIERMAN: Yeah. We're almost 11 done. 12 (A short break was taken.) 13 MR. ST. ONGE: All right, sir. Let's 14 go back on the record. 15 I have no further questions at this 16 time for you. 17 MR. BLEYER: That was anticlimactic. 18 MR. ST. ONGE: Does anybody else have 19 questions? 20 MR. BLEYER: I've got some, yes. 21 EXAMINATION 22 BY MR. BLEYER 23 Q. Doug -- may I call you "Doug"? 24 A. Yes.</p>	<p>1 Q. Do you know -- I guess I should ask Nate. 2 MR. BLEYER: But when did Jim pass 3 away? 4 MR. MARLEN: April 2, 2022. 5 BY MR. BLEYER 6 Q. Jim passed away in April of 2022. The 7 first contract for this property was the farming 8 season for 2021? 9 A. Yes. 10 Q. Okay. And you reached an agreement with 11 Jim to talk about farming that property in 2021? 12 A. I believe so, yes, yep. 13 Q. And you have a written contract? 14 A. I believe. That year, I believe it was a 15 one- or two-year contract. It may have been 2020 16 when we started. I can't remember at this point -- 17 Q. Okay. 18 A. -- that we started farming it, but, yeah, 19 I believe there was a two-year contract, and then we 20 went to a five-. 21 Q. And did you say last year was the first 22 year of this five-year contract? 23 A. I believe so. 24 Q. So this planting season when you harvest</p>

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<p style="text-align: right;">Page 138</p> <p>1 next month or whenever will be the second year of 2 the contract, or is this -- 3 A. I believe so, yes. I'm a little fuzzy on 4 that. A lot of things run together. 5 Q. That would back up to about when Jim 6 passed away. 7 So when you had signed that new five-year 8 contract with the Marlen Family Trust, was it with 9 the trust? 10 A. Yes. 11 Q. Okay. And the document you have for 12 farming that, the lessor is the Marlen Family Trust? 13 A. Yes. 14 Q. Do you know who signed it as the trustee 15 of this five-year contract? 16 A. I did not look at that. I don't know. 17 I'm not sure if it was a brother. I couldn't tell 18 you. 19 Q. As far as the Marlen property that you 20 farmed and are under contract to farm now, has Nate 21 Marlen individually signed any documents to allow 22 you to farm on that property? 23 A. Not to my knowledge. 24 Q. Okay. It's your understanding that your</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Yeah, mm-hmm, yes. 2 Q. That's good. 3 And then, what, in the last five years or 4 so, you became acquainted with him differently or 5 better or however you want to put it? 6 A. Better, better. 7 Q. Okay. And do you farm any property for 8 Nate individually? Does he own any property 9 individually? 10 A. No. 11 Q. This Marlen property that's north of Joe 12 Lucas, is that the only Marlen property that you 13 farm, or are there others? 14 A. Yes. 15 Q. And I think you said it was 580? 16 A. 530. 17 Q. 530 acres. 18 And even though it's not a square, it's 19 contiguous? 20 A. Yes, yeah. I mean, a portion. There is a 21 levee separating some fields, but, yeah, it would be 22 contiguous. 23 Q. Okay. So the first year you farmed it, 24 who contacted you to farm it?</p>
<p style="text-align: right;">Page 139</p> <p>1 agreement to do any work on the Marlen property 2 is -- on behalf of the lessor would be the Marlen 3 Family Trust? 4 A. Rephrase that again. 5 Q. The work you do on the Marlen property -- 6 A. Concerning excavation? 7 Q. Concerning any of it. 8 A. Any of it? Okay. 9 Q. Any operations you do on this Marlen 10 property that we referred to -- the Marlen 11 property -- it's always been at the request of the 12 Marlen Family Trust? 13 A. Yes. 14 Q. Okay. Do you pay your cash rent before 15 planting or after planting? 16 A. We pay half and half, half at the 17 beginning of the year and the other half in the 18 fall. 19 Q. Okay. And it's strictly a cash operation, 20 cash rent? 21 A. Yes. 22 Q. And when you -- you said you've known Nate 23 Marlen. I think you said you've known who he was 24 for, like, 15 years?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. The first year we farmed it? 2 Nate brought up -- in conversation with 3 Nate, he brought it up that the farm up north needs 4 a lot of work. 5 "Would you be interested going up and 6 trying to give us an idea what we can do? Maybe 7 talk about -- you know, you might want to be 8 the -- you might want to rent it." 9 So that's where that got started. 10 Q. And was Jim involved in that conversation, 11 too? 12 A. After he's -- Nate referred back to Jim 13 saying, "It's all Dad's decisions. You need to get 14 ahold of Dad, but, you know, let's set that -- let's 15 set that up before we talk to Dad." 16 Q. Okay. 17 A. Jim. 18 Q. So in other words, Nate suggested to you 19 first that you might want to farm this Marlen 20 property? 21 A. First was the drainage issues, and then we 22 might want to because they was having trouble at the 23 time with the tenant that they currently had, and 24 then, you know, said if we can work out a deal,</p>

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<p>1 maybe we can get some drainage done and maybe farm 2 the ground. 3 And I said, "It sounds great." And he 4 said, "Well, I've got to run this past Jim," his 5 dad, and "We'll set up a meeting and talk," which we 6 did. 7 Q. Okay. So I was confused. Maybe just 8 clear my confusion. 9 You did this drainage work before you 10 started farming? 11 A. The same year that we started farming, we 12 started the drainage work, yes. 13 Q. Okay. 14 A. That spring. 15 Q. Okay. And I think you said that meeting, 16 you were there with Jim and Nate and you. That was 17 in the spring of '21, February of '21, I think it 18 was? 19 A. Meaning where? 20 Q. When you had this meeting about the 21 drainage. 22 A. Yeah. I believe so, yeah. 23 Q. Okay. 24 A. Yeah.</p>	<p>1 Q. Jim Marlen was present? 2 A. Yes. 3 Q. And Nate Marlen was present? 4 A. Yes. 5 Q. And as I understand it, the discussion as 6 to what would be done on the Marlen property, the 7 discussion was between you and Jim Marlen? 8 A. For the most part, yes. 9 Q. Okay. 10 A. Yeah. 11 Q. At one point you said Nate just sat there 12 and didn't say anything? 13 A. I mean, at that time Jim was alive. He 14 was making all those decisions on the farm. 15 Q. We're talking about this meeting in 16 February when you were talking about cleaning the 17 ditch? 18 A. Right. 19 Q. And at that meeting about this ditch work 20 and drainage work on the Marlen property, the 21 discussion was between you and Jim Marlen, correct? 22 A. Pretty much, yes. 23 Q. What would -- pretty much that's a lawyer 24 question, okay? That always pops another question.</p>
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<p>1 Q. So initially Nate says, "Hey, we have some 2 drainage problems. Maybe we can work something out, 3 and you can farm it." 4 And then Nate referred you to his father 5 who had to make all the decisions? 6 A. At that point in time, yes. 7 Q. Okay. And then eventually you contacted, 8 I guess, and had a meeting with Jim Marlen, Nate 9 Marlen, and yourself? 10 A. That's correct. 11 Q. And that was at your place or 12 their -- Jim's place or -- 13 A. Typically it was all at my office. 14 Q. Okay. 15 A. And then Jim and I also discussed things 16 about the farm over the phone. 17 Q. Okay. Earlier you talked about -- today 18 about that meeting about the drainage work you were 19 going to do and about the structure. As I 20 understand it, that meeting was at Blankenship 21 Construction's office? 22 A. At my office, correct. 23 Q. You were present? 24 A. Yes.</p>	<p>1 A. It was. It was between Jim and I. 2 Q. Okay. So when you and Jim had the 3 discussion about the drainage issues on the Marlen 4 Family Trust at Blankenship Construction's office, 5 you and Jim discussed what work needed to be 6 performed on the Marlen Family Trust property? 7 A. Yes. 8 Q. Okay. And you had walked it before that, 9 I assume? That's when you saw this concrete 10 structure? 11 MR. ST. ONGE: Objection. That 12 misstates the prior testimony. He said he had never 13 walked it. He said he looked at it from the Marlen 14 property. 15 MR. BLEYER: I'll rephrase the 16 question. 17 THE DEPONENT: Yeah. 18 BY MR. BLEYER 19 Q. We're talking farm lingo. 20 A. Yes. 21 Q. So you've been on the property, correct? 22 A. I've been on the property. 23 MR. ST. ONGE: What property are we 24 talking about?</p>

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<p style="text-align: right;">Page 146</p> <p>1 MR. BLEYER: The Marlen property. 2 THE DEPONENT: Yes. 3 BY MR. BLEYER 4 Q. That was before this meeting? 5 A. Yes. 6 Q. And while you were on the Marlen property, 7 you observed this concrete structure? 8 A. I observed it at some point in time. I 9 don't know if it was prior to that meeting or not, 10 but, yes, I had observed it. Yes, it was prior to 11 that meeting. 12 That's why the discussion was 13 over -- because we had several meetings on the farm. 14 As we would start one section and get it done, then 15 we'd move on to the next and the next. 16 And we could always kind of reconvene and 17 say, "Here's what needs to be done here, you know." 18 And when we got to that ditch that we was 19 cleaning out on the Marlens, I believe we come down, 20 and I said, "Hey, we need to get together. There's 21 a concrete structure down there." 22 So they came out. We sat in the office, 23 and we discussed it. 24 And I said, "It needs to come out. I</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes. 2 Q. Okay. And what did you suggest to be done 3 to that ditch on the west side of the levee with the 4 tube through it? 5 A. That we clean the ditch out. My 6 suggestion was that we clean the ditch out from the 7 tube that goes through the levee all the way down to 8 where it goes south off to the -- off of their 9 property down to Lucas. 10 And I said, "There's a concrete structure 11 there, Jim. It's old, dilapidated. It's blocking 12 up water." I said, "I suggest we pull it out." 13 He said -- and then he told me the story 14 about he'd put it in years ago and didn't work, and 15 said, "Yeah, go ahead and take it out. If you think 16 it needs to come out, take it out." So I did. 17 Q. So let's talk from the tube to the 18 concrete structure. 19 A. Okay. 20 Q. What were you going to do, and what 21 did -- what were you going to do for that part of 22 the ditch on the west side of the levee with the 23 tube through it? 24 A. We went in and basically left the bigger</p>
<p style="text-align: right;">Page 147</p> <p>1 mean, it's causing an issue." 2 Q. So let's talk about the meetings or 3 discussions you had, and I want to refer 4 to -- limit it to the ditch, which I understand is 5 on the west side of this levee that's got the tube 6 through it? 7 A. Yes. 8 Q. Okay. And that's the ditch -- ditch in 9 question that we've all been talking about here 10 today? 11 A. Yes. 12 Q. Okay. Somewhere in that ditch, you 13 observed prior to this meeting a concrete structure? 14 A. Yes. 15 Q. Okay. And at that time, did you know 16 whose property that concrete structure was on? 17 A. No. 18 Q. Okay. And then after observing that ditch 19 and the concrete structure sometime after that, you 20 and Jim had a discussion at your office, and Nate 21 was there, too, but you and Jim had a discussion as 22 to what work that needed to be done on the ditch on 23 the west side of this levee that has the tube 24 through it?</p>	<p style="text-align: right;">Page 149</p> <p>1 trees that's down along that ditch and took out the 2 smaller stuff so we could reach in and clean that 3 ditch out all the way down through there. 4 Q. Now, let's talk about this concrete 5 structure. You said it was dilapidated? 6 A. Yes. 7 Q. You and I probably know what that means, 8 but what do you consider -- 9 A. In disrepair, junk. 10 Q. Okay. Was it operating as any type of a 11 water retention structure in the condition you saw? 12 A. No. It was retained water, yes, but it 13 wasn't supposed to be doing it in that fashion. 14 Q. Okay. And was it just like a concrete 15 berm with pipes through it that has the ability to 16 put some gates over the front of the pipes? 17 A. Yes. 18 Q. Okay. And I think you described 19 earlier -- and I've seen this happen before -- when 20 the concrete structure is impeding water, water will 21 start to go around the structures? 22 A. Yes. 23 Q. And I assume, then, that the middle of the 24 structure was the same level as the end of the</p>

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<p>1 structures, and that's -- in other words, so it 2 wouldn't go through the middle? 3 A. Yes. 4 Q. Do you know what I'm talking about, how 5 you -- 6 A. Mm-hmm, yes. 7 Q. If you put a pipe in a ditch, you've got 8 to make sure that the end of the riprap or the 9 barrier is higher than the ditch, or you'll have 10 erosion around the concrete or rock? 11 A. Correct. 12 Q. Okay. So did you suggest to Jim Marlen 13 that this structure should be removed? 14 A. Yes. 15 Q. Okay. And he told you whatever -- do 16 whatever you feel that's necessary to -- is that 17 correct? 18 A. Yes. 19 Q. Do you do this type of work? I mean, does 20 Blankenship Construction -- is that your -- 21 A. Yes. 22 Q. You do excavating, you make drainage 23 ditches, you clear drainage ditches; is that 24 correct?</p>	<p>1 BY MR. BLEYER 2 Q. Okay. And then as I understand it, Rex is 3 the one that did the work? 4 A. Correct. 5 Q. Okay. Did you later learn -- or how did 6 you learn that -- or strike that. 7 Did you later learn this concrete 8 structure that you removed was not on the Marlen 9 Family Trust property? 10 A. Did I learn that? 11 Q. Yes. 12 A. Yes, I learned that. 13 Q. From whom? 14 A. From Nate. 15 Q. And did he tell you how he knew that? 16 A. That Joe had called him upset that we'd be 17 on his property. 18 Q. And when you had that meeting with Jim 19 Marlen, no one -- there was no discussion of where 20 the property line was? 21 A. No. 22 Q. That's a bad question. 23 When you had this meeting with Jim, was 24 there a discussion where the property line was?</p>
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<p>1 A. That's correct. 2 Q. And how long have you been doing that as a 3 company? 4 A. Since 1968. 5 Q. If I had a farm, you're the guy to call 6 and say, "Hey, this farm is not draining"? You're 7 the expert and come tell me what I need to do? 8 A. I will -- I will say we'll come down and 9 take a look at it. We'll discuss it. I'll give you 10 my best estimate, what I think needs to happen. 11 Then at that point, if you agree, then we 12 discuss estimated costs, and from there we'd proceed 13 forward and either: "That's too much," or "That 14 sounds great. Come and do it." 15 Q. And that's basically what you did with Jim 16 Marlen? 17 You came down, looked at it, assessed it, 18 and said, "This structure needs to be removed. 19 That's my suggestion," and that's what took place? 20 A. Right. 21 MR. ST. ONGE: Objection. 22 Mischaracterizes the testimony of the witness. 23 THE DEPONENT: Correct. 24 ///</p>	<p>1 A. No. 2 Q. Okay. 3 A. Not that I can remember, no. 4 Q. Okay. Did the Marlen Family Trust ever 5 direct you to go onto the Lucas property? 6 A. No. 7 MR. ST. ONGE: Objection. The trust? 8 Can you identify a person? 9 MR. BLEYER: I'll get to that. 10 BY MR. BLEYER 11 Q. The trust, or the trustee, the trustee of 12 the trust did they ever direct you to go onto the 13 Lucas property of the Marlen Family Trust? 14 MR. ST. ONGE: Objection. The 15 question is vague. It assumes evidence. Who is the 16 trustee we're talking about? 17 BY MR. BLEYER 18 Q. Do you understand the question? 19 A. Yeah, yeah. 20 Q. Okay. 21 A. No. No one from the trust, trustee 22 directed me to go onto Joe Lucas's property. 23 Q. Did Jim Marlen direct you to go on the 24 Lucas property?</p>

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<p>1 A. No.</p> <p>2 Q. Did Nate Marlen ever direct you to go on</p> <p>3 the Lucas property?</p> <p>4 A. No.</p> <p>5 Q. Did Jim Marlen direct you to remove his</p> <p>6 concrete structure?</p> <p>7 A. Jim Marlen said that "If you think that it</p> <p>8 needs to come out, take it out."</p> <p>9 Q. And then after he told you that, it was</p> <p>10 your decision to take it out?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Did Nate Marlen ever give you any</p> <p>13 direction about this concrete structure?</p> <p>14 A. No.</p> <p>15 Q. Did the trustee or whoever it was of the</p> <p>16 Marlen Family Trust ever direct you to excavate a</p> <p>17 ditch on the Lucas property by making it wider,</p> <p>18 longer, and deeper?</p> <p>19 A. No.</p> <p>20 Q. Did Jim Marlen ever direct you to go onto</p> <p>21 the Lucas property and excavate the original ditch</p> <p>22 to make it longer, wider, and deeper?</p> <p>23 A. No.</p> <p>24 Q. Did Nate Marlen ever direct you to go on</p>	<p>1 Q. Did Blankenship Construction intentionally</p> <p>2 excavate and create a new ditch on the Lucas</p> <p>3 property?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Okay. Are you aware of any work that</p> <p>6 Lucas -- or any work that Blankenship did on the</p> <p>7 Lucas property blocked access to the Lucas property?</p> <p>8 A. Other than the original ditch-cleaning</p> <p>9 where Joe said that we can't get across there -- or</p> <p>10 "I can't get across there." No, other than that.</p> <p>11 Q. And does the Lucas property run all the</p> <p>12 way to the south to the river?</p> <p>13 A. I believe so, yes.</p> <p>14 Q. And were you -- I assume you were on the</p> <p>15 Lucas property where the excavation stopped?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Your being from that area and being</p> <p>18 around there, how far are you from the Kaskaskia</p> <p>19 River when that drainage -- where you've stopped</p> <p>20 working on the drainage ditch?</p> <p>21 A. 300 feet.</p> <p>22 Q. Okay.</p> <p>23 A. 400 feet.</p> <p>24 Q. And you talked about him pointing to some</p>
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<p>1 the Lucas property to excavate it to make it -- the</p> <p>2 original ditch to make it wider, longer, or deeper?</p> <p>3 A. No.</p> <p>4 Q. There was some question earlier about a</p> <p>5 new ditch. Are you -- are you aware of a new ditch</p> <p>6 that --</p> <p>7 A. I'm not aware of a new ditch. Like I</p> <p>8 said, I've not been back to see it after I directed</p> <p>9 Rex and Barry to put the crossing in. So I</p> <p>10 apologize. I've not seen it.</p> <p>11 Q. Okay. Are you aware that -- has anybody</p> <p>12 advised you that the work that your company did</p> <p>13 caused a new ditch to be -- to originate on the</p> <p>14 Lucas property and take water somewhere else?</p> <p>15 A. No.</p> <p>16 Q. Does that question make sense?</p> <p>17 A. Yes. In other words, work performed that</p> <p>18 we did may have caused erosion or a new ditch to</p> <p>19 start some other direction. No one's never</p> <p>20 mentioned anything about that.</p> <p>21 Q. Okay. Are you aware whether or not</p> <p>22 Blankenship Construction on the Lucas property</p> <p>23 intentionally excavated a new ditch?</p> <p>24 A. No.</p>	<p>1 corn stalks?</p> <p>2 A. Yes.</p> <p>3 Q. I assume that is field rubble or field</p> <p>4 trash that comes down with the water?</p> <p>5 A. Yes.</p> <p>6 Q. Like you see in every river bottoms where</p> <p>7 the water hits towards the river, all the corn</p> <p>8 stalks and everything piles up, doesn't it?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And everything else that floats</p> <p>11 down with the water when it comes through this?</p> <p>12 A. Yes.</p> <p>13 Q. This Marlen property, is it flood prone?</p> <p>14 A. Yes.</p> <p>15 Q. I assume it's in the flood plain since</p> <p>16 it's on the west side of the levee?</p> <p>17 A. Yes.</p> <p>18 Q. Is there another levee between that levee</p> <p>19 and the Kaskaskia River to the west?</p> <p>20 A. There is an old, old levee that's got</p> <p>21 breaks in it. Now, I've not walked every square</p> <p>22 inch of it, but, yes.</p> <p>23 Q. Is that old levee basically nearly</p> <p>24 adjacent to the river?</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. I really can't answer that. I 2 didn't -- I've just only seen one portion of it. 3 Q. Okay. So the Marlen property and the 4 Lucas property on the west side of this levee has 5 water -- river water on it -- I wouldn't say yearly. 6 I assume there's some years it probably doesn't, but 7 is that a common occurrence that the river comes up 8 in the spring and puts water all over of the Lucas 9 property and the Marlen property? 10 A. Yes. 11 Q. And then you said it all drains south? 12 A. Yes. 13 Q. Okay. And so if these fields are covered 14 with flood water or raising river water after the 15 harvest when it's receding to the south, that's what 16 brings all the stubble off the Marlen property onto 17 the Lucas property and on into the Kaskaskia River? 18 A. Yes. 19 Q. And is that what you're referring to when 20 you told Joe Lucas that there's nothing you can do 21 about the corn stubble that's stacked up or 22 accumulated down by this pond? 23 A. Yes. 24 Q. Okay. And I assume after you became aware</p>	<p style="text-align: right;">Page 160</p> <p>1 day that you met there with Joe; is that correct? 2 A. Yes. 3 Q. Is that the only time that you were aware 4 that you were on the Lucas property? 5 A. Yes, that I knew I was on the Lucas 6 property. 7 Q. That's what I mean. Right. 8 Not knowing when you were out there 9 sometimes where the line was, but when you met with 10 Joe, that's the first time that you actually had 11 knowledge that you were on Lucas's property? 12 A. Rephrase that again. 13 Q. That was a bad question. Thank you. 14 Lucas's property butts the Marlen property 15 on the south -- Marlen south, correct? 16 A. Yes. 17 Q. Okay. And you farm up towards the south 18 end of Marlen property up to the Lucas property, 19 correct? 20 A. Yes. 21 Q. Okay. And when you were out there meeting 22 with Joe, did he show you where the line was? 23 A. No. 24 Q. Have you ever seen any survey, any</p>
<p style="text-align: right;">Page 159</p> <p>1 of the problems on the Lucas property, your 2 company -- you met with Joe, and then you went in 3 there and made a crossing across the portion of the 4 ditch that you excavated so that the Lucas property 5 could be accessed from the levee across the ditch to 6 the property? 7 A. Yes. 8 Q. Okay. Did you use -- you described the 9 pipe. I assume -- and that's a bad thing to do. Is 10 it just the black, corrugated, rubber, plastic pipe 11 you're using? 12 A. It's referred to as N-12. It is a black 13 plastic -- it's a smooth interior with a corrugated 14 exterior. 15 Q. Okay. And it snaps together? 16 A. Yeah, except I think on that section, we 17 had a damage. We cut the damage off, and we ended 18 up putting it together and bolting it, and I think 19 they threw some concrete around it is what Barry 20 told me, and Rex. 21 Q. And they're a pain in the ass to snap them 22 together unless you have an excavator on it? 23 A. The big ones are, yes. 24 Q. Now, you were on the Lucas property the</p>	<p style="text-align: right;">Page 161</p> <p>1 markings of any lines? 2 A. No. 3 Q. Okay. And as far as this concrete 4 structure being on the Lucas property, you 5 had -- you believe it was today as a result of Nate 6 telling you that Joe said it was? 7 A. Yes. 8 Q. Okay. Now, let's talk when you were out 9 there with Joe. 10 You saw some trees? 11 A. Yes. 12 Q. Trees that were excavated by your company 13 out of the ditch? 14 A. Yes. 15 Q. And they were piled up? 16 A. Yes. 17 Q. Okay. So do you know how soon after the 18 work was performed on the ditch that you were on the 19 property? 20 A. Let's see. I was on the property. 21 Q. With Joe, I mean. 22 A. Yeah. Not quite a year maybe. 23 Q. Okay. Had there been a flood season or a 24 spring season?</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. Well, should have been, yes.</p> <p>2 Q. Okay. Not being familiar with that part</p> <p>3 of the Kaskaskia, do you have trouble with fall</p> <p>4 flooding very often, or is it just spring flooding?</p> <p>5 A. No. They can be fall also.</p> <p>6 Q. Okay.</p> <p>7 A. Winter, fall, yeah.</p> <p>8 Q. Where I'm going with that question is: Do</p> <p>9 you know from the time you did -- your company did</p> <p>10 the work until you met with Joe Lucas on the</p> <p>11 property, had the river carried any of the trees</p> <p>12 away?</p> <p>13 A. I wouldn't know that. I don't know.</p> <p>14 Q. When you saw this pile of trees when you</p> <p>15 were out there with Joe Lucas, can you describe that</p> <p>16 for us, please, what you observed?</p> <p>17 A. That it was a pile of trees that we</p> <p>18 removed from the ditch that was stacked up against</p> <p>19 on his property kind of over next to some other</p> <p>20 standing timber, and it was laid in a kind of</p> <p>21 north-south fashion.</p> <p>22 Q. Kind of like windrowed up against --</p> <p>23 A. Not necessarily windrowed, but piled. It</p> <p>24 was just -- they're kind of all stacked together</p>	<p style="text-align: right;">Page 164</p> <p>1 of the Marlen property?</p> <p>2 A. Yes.</p> <p>3 Q. And you actually do -- you personally do</p> <p>4 any of the farming?</p> <p>5 A. Fall. I do the fall harvest. I do not do</p> <p>6 the spring planting.</p> <p>7 Q. So you do the combining?</p> <p>8 A. Yeah.</p> <p>9 Q. And make sure the money gets in, right?</p> <p>10 Do you ever get mad at the planter, the</p> <p>11 guy that did the planting, when you run the combine?</p> <p>12 A. Yeah.</p> <p>13 Q. Did you harvest the Marlen property last</p> <p>14 fall?</p> <p>15 A. Yes.</p> <p>16 Q. Were the trees still there on the south</p> <p>17 end of the Marlen property?</p> <p>18 A. To be quite honest, I couldn't tell you.</p> <p>19 I didn't look over there. I was concentrating right</p> <p>20 here in front of me.</p> <p>21 Q. Okay. Would there be a place on the</p> <p>22 Marlen property that the trees could be brought back</p> <p>23 on the Marlen property without impeding on the crop</p> <p>24 field?</p>
<p style="text-align: right;">Page 163</p> <p>1 side by side.</p> <p>2 Q. Okay. And do you have any idea how many</p> <p>3 trees there were?</p> <p>4 A. Like I said, 6 to a dozen, 20. I'm not</p> <p>5 sure. I couldn't tell you. They're hard to count</p> <p>6 when they're in a pile.</p> <p>7 Q. That's true.</p> <p>8 Were they stumps in all or just --</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So when you clean out these</p> <p>11 ditches, you use a ditching bucket of some sort on</p> <p>12 your excavator and take them -- root, rod, and all?</p> <p>13 A. Yes.</p> <p>14 Q. And then part of the agreement with Joe</p> <p>15 was to -- you were going to use an excavator or</p> <p>16 track -- the bulldozer and something and move those</p> <p>17 trees back onto the Marlen property?</p> <p>18 A. Yes.</p> <p>19 Q. And did you, in fact, direct Rex to do</p> <p>20 that?</p> <p>21 A. Yes.</p> <p>22 Q. Did he tell you he did that?</p> <p>23 A. They said it was done.</p> <p>24 Q. Okay. And are you involved in the farming</p>	<p style="text-align: right;">Page 165</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. There was an area where we -- when we come</p> <p>4 down and cleaned the ditch that was on the Marlen</p> <p>5 farm. We'd stack what brush we took out of the</p> <p>6 Marlen farm along there. So we probably just added</p> <p>7 that to that. So I wouldn't be able to tell you one</p> <p>8 from the other.</p> <p>9 Q. So what you just described, this ditch</p> <p>10 along the west side of this levee would go farther</p> <p>11 south than the farm field?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And so the little chute, so to</p> <p>14 speak -- do you know what I'm talking about? I</p> <p>15 guess there's a chute past the farm field that you</p> <p>16 cleaned out on the ditch, right?</p> <p>17 A. Yeah.</p> <p>18 Q. Do understand what I'm saying?</p> <p>19 I mean, kind of the farm field, and then</p> <p>20 you clean the ditch further south?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. Yes.</p> <p>24 Q. And I assume the levee is on one side as</p>

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<p>1 opposed to trees are on the other?</p> <p>2 MR. ST. ONGE: Let him answer.</p> <p>3 THE DEPONENT: Yes.</p> <p>4 BY MR. BLEYER</p> <p>5 Q. So any trees you took out of the ditch on</p> <p>6 the Marlen property as opposed to trees you brought</p> <p>7 back from the Lucas property would have been in that</p> <p>8 area south of where you farmed?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Adjacent to the drainage ditch?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Stacking them on the side of the</p> <p>13 drainage ditch does not impede the drainage process,</p> <p>14 does it?</p> <p>15 A. No.</p> <p>16 Q. Working in and around Fayette County area,</p> <p>17 I assume you do a lot of work in the bottoms?</p> <p>18 A. Yeah, yes.</p> <p>19 Q. You're familiar with types of trees? What</p> <p>20 trees are valuable, what trees are not valuable?</p> <p>21 A. Somewhat, yes.</p> <p>22 Q. Okay. Did you see any valuable trees in</p> <p>23 that area when you were on the Lucas's property with</p> <p>24 Joe?</p>	<p>1 MR. ST. ONGE: Objection to the form</p> <p>2 of the question. It's vague.</p> <p>3 THE DEPONENT: No.</p> <p>4 BY MR. BLEYER</p> <p>5 Q. When I say "Marlen Family Trust," I'm</p> <p>6 referring to the trustee. Did the trustee ever tell</p> <p>7 you to remove any trees from the Lucas property?</p> <p>8 MR. ST. ONGE: Objection to the form</p> <p>9 of the question. It's also vague. If you can</p> <p>10 identify a person, it would be helpful.</p> <p>11 THE DEPONENT: No.</p> <p>12 BY MR. BLEYER</p> <p>13 Q. At the time of the incident, Jim Marlen</p> <p>14 was trustee. Did Jim Marlen, trustee of the Marlen</p> <p>15 Family Trust, ever direct you to remove any trees</p> <p>16 from the Lucas property?</p> <p>17 A. No.</p> <p>18 Q. Did Nate Marlen ever direct you to remove</p> <p>19 any trees from the Lucas property?</p> <p>20 A. No.</p> <p>21 Q. Okay. As I understand it, while Jim</p> <p>22 Marlen was living, all the direction as to the work</p> <p>23 you, Blankenship, were trying to farm would be at</p> <p>24 the direction of Jim Marlen?</p>
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<p>1 A. I did not. I wasn't specifically looking</p> <p>2 for valuable trees, so I can't say that I noticed</p> <p>3 any valuable trees or I didn't.</p> <p>4 Q. Valuable trees.</p> <p>5 What else besides oak is good that grows</p> <p>6 in the --</p> <p>7 A. In the river bottoms would be walnut</p> <p>8 potentially. Typically your hardwoods in your river</p> <p>9 bottoms are the red oaks, white oaks. The ones more</p> <p>10 valuable are not in your river bottoms. Your black</p> <p>11 oaks, bur oaks, stuff like that, they tend to like</p> <p>12 that weather -- damper, hydric soil better. Other</p> <p>13 than that, it's sycamore, cottonwoods, willows.</p> <p>14 Q. Have you ever seen a sycamore or willow</p> <p>15 growing in the high ground, dry ground?</p> <p>16 A. No.</p> <p>17 Q. They like the river bottoms, though, don't</p> <p>18 they?</p> <p>19 A. They like water.</p> <p>20 Q. Okay. Did Jim Marlen direct you to cut or</p> <p>21 remove any trees from the Lucas property?</p> <p>22 A. No.</p> <p>23 Q. Did the Marlen Family Trust direct you to</p> <p>24 remove any trees from the Lucas property?</p>	<p>1 A. Agreed upon between Jim Marlen and myself,</p> <p>2 yes.</p> <p>3 Q. Okay. Even if Nate would have made a</p> <p>4 suggestion, you still had to reach the agreement</p> <p>5 with his dad while he was living?</p> <p>6 A. Yes.</p> <p>7 MR. BLEYER: I need to talk to my</p> <p>8 co-counsel for a second.</p> <p>9 MR. ST. ONGE: Okay.</p> <p>10 (A short break was taken.)</p> <p>11 BY MR. BLEYER</p> <p>12 Q. Doug, when you had the meeting with Joe</p> <p>13 Lucas on his property, was Nate Marlen present?</p> <p>14 A. No.</p> <p>15 Q. Was Jim Marlen present?</p> <p>16 A. No.</p> <p>17 Q. And these gentlemen that worked for</p> <p>18 you -- Rex, and who was the other guy?</p> <p>19 A. Barry Matthews.</p> <p>20 Q. Barry.</p> <p>21 I assume you were the one that would have</p> <p>22 directed them what to do?</p> <p>23 A. Yes.</p> <p>24 Q. Let me ask the question.</p>

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<p style="text-align: right;">Page 170</p> <p>1 You were the one that directed them to</p> <p>2 perform the work they performed?</p> <p>3 A. Yes.</p> <p>4 Q. You wouldn't expect them -- or strike</p> <p>5 that.</p> <p>6 Did Nate Marlen give them any direction on</p> <p>7 what to do on the Marlen Family Trust --</p> <p>8 A. No.</p> <p>9 Q. -- the property?</p> <p>10 Did Jim Marlen direct your employees to do</p> <p>11 any work on the --</p> <p>12 A. No.</p> <p>13 MR. ST. ONGE: Let him finish the</p> <p>14 question.</p> <p>15 On what property?</p> <p>16 MR. BLEYER: I was getting ready</p> <p>17 to --</p> <p>18 THE DEPONENT: Oh, sorry.</p> <p>19 BY MR. BLEYER</p> <p>20 Q. Did Nate Marlen direct any of your</p> <p>21 employees to do any work on the Marlen Family Trust</p> <p>22 property?</p> <p>23 A. No.</p> <p>24 Q. Did Nate Marlen direct any of your</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Have you ever had one of your</p> <p>2 recommendations by a landowner rejected and saying,</p> <p>3 "We're not interested in that"?</p> <p>4 A. Yes.</p> <p>5 Q. And if they reject your recommendation, do</p> <p>6 you still do the work?</p> <p>7 A. No.</p> <p>8 Q. At the time you had this meeting with Jim</p> <p>9 Marlen, it was your understanding, based upon</p> <p>10 comments from Jim, that he had put this structure</p> <p>11 in, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And did you conclude at that time,</p> <p>14 rightfully or wrongfully, that that meant that Jim</p> <p>15 may have owned where that property was at?</p> <p>16 A. Yeah.</p> <p>17 Q. If Jim would have said to you: "I don't</p> <p>18 want to remove that," would you have still removed</p> <p>19 it?</p> <p>20 A. No.</p> <p>21 MR. ST. ONGE: Objection. Calls for</p> <p>22 speculation.</p> <p>23 BY MR. DEVORE</p> <p>24 Q. In your experience, if a landowner tells</p>
<p style="text-align: right;">Page 171</p> <p>1 employees of work to do on the Lucas property?</p> <p>2 A. No.</p> <p>3 Q. Did Jim Marlen direct your employees how</p> <p>4 to do any work on the Marlen property?</p> <p>5 A. No.</p> <p>6 Q. Did Jim Marlen direct any of your</p> <p>7 employees how to do work on the Lucas property?</p> <p>8 A. No.</p> <p>9 MR. BLEYER: That's all the questions</p> <p>10 I had.</p> <p>11 MR. DEVORE: Just a couple.</p> <p>12 EXAMINATION</p> <p>13 BY MR. DEVORE</p> <p>14 Q. Mr. Blankenship, you've had a lot of</p> <p>15 questions about the removal of this concrete</p> <p>16 structure and the conversations you had with Jim</p> <p>17 Marlen.</p> <p>18 You testified that over your decades of</p> <p>19 doing these types of projects, you would give a</p> <p>20 recommendation to a landowner, and the landowner</p> <p>21 would accept all or part of your recommendation, and</p> <p>22 then if you come to an agreement on price, you would</p> <p>23 do the work?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 you: "I don't want that done," can you -- do you</p> <p>2 still remove it?</p> <p>3 A. No.</p> <p>4 Q. So your recommendation, under this fact,</p> <p>5 was accepted by Jim, correct?</p> <p>6 A. Yes.</p> <p>7 MR. BLEYER: Just show my objection.</p> <p>8 It's called "mere speculation."</p> <p>9 MR. DEVORE: What's speculation,</p> <p>10 counsel? What's speculation?</p> <p>11 MR. BLEYER: As to what the question</p> <p>12 was. Unless you want to go talk to Jim.</p> <p>13 MR. DEVORE: You made a</p> <p>14 recommendation to Jim -- well, we've been listening</p> <p>15 to Jim's conversations all day.</p> <p>16 BY MR. DEVORE</p> <p>17 Q. You made a recommendation when Jim and</p> <p>18 Nate were present to remove this structure, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Jim said to you: "If that's your</p> <p>21 recommendation, go ahead and remove it," correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And because of that acceptance of</p> <p>24 your recommendation, only then is that why you</p>

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<p style="text-align: right;">Page 174</p> <p>1 removed it?</p> <p>2 A. Yes.</p> <p>3 Q. Now, you were there with Mr. Lucas, and</p> <p>4 you walked from the south from the Kaskaskia up to</p> <p>5 where this old structure used to be, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And so you were able to visually</p> <p>8 see at that point in time what appeared to be the</p> <p>9 work that Rex had done --</p> <p>10 A. Yes.</p> <p>11 Q. -- correct?</p> <p>12 You saw the area where this old structure</p> <p>13 was at?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. You saw the area north of where the</p> <p>16 old structure was at where he would have come from</p> <p>17 the drainage ditch to the north working his way</p> <p>18 south, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. You saw somewhere in this general</p> <p>21 area a pile of trees?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, how many piles of trees in</p> <p>24 your decades of experience have you stacked in your</p>	<p style="text-align: right;">Page 176</p> <p>1 A. There would have been -- at first,</p> <p>2 clearing the brush would have been a "digging"</p> <p>3 bucket.</p> <p>4 Q. Okay.</p> <p>5 A. And then they would have dropped it off</p> <p>6 and went to the smooth-mouth, ditching bucket.</p> <p>7 MR. ST. ONGE: I'm sorry. I didn't</p> <p>8 understand that. You said he was out there digging?</p> <p>9 MR. DEVORE: No, I didn't say that,</p> <p>10 did I? I apologize. No.</p> <p>11 BY MR. DEVORE</p> <p>12 Q. Whoever would have been there doing this</p> <p>13 work -- Rex -- would he have only used the ditching</p> <p>14 bucket for this work, or would he have had another</p> <p>15 bucket?</p> <p>16 MR. ST. ONGE: Sorry. What work are</p> <p>17 we talking about? The repair work or the original</p> <p>18 work?</p> <p>19 MR. DEVORE: The original work. Fair</p> <p>20 enough.</p> <p>21 BY MR. DEVORE</p> <p>22 Q. When he cleaned this ditch, would he have</p> <p>23 cleaned it all with one bucket, or would he have had</p> <p>24 two buckets on the excavator?</p>
<p style="text-align: right;">Page 175</p> <p>1 time?</p> <p>2 A. Several, lots.</p> <p>3 Q. Is there a significant difference between</p> <p>4 a pile of 20 trees and a pile of 150 trees?</p> <p>5 A. There is no piles of 150 trees. It would</p> <p>6 be too big of a pile. Yes, there's a significant</p> <p>7 difference.</p> <p>8 Q. I was getting to that. You knew I've been</p> <p>9 doing this awhile, too, right?</p> <p>10 Can you even stack 150 trees in one stack?</p> <p>11 A. They would have to be very small trees to</p> <p>12 do it.</p> <p>13 Q. How about trees that are 56 inches in</p> <p>14 diameter?</p> <p>15 A. No way, no.</p> <p>16 Q. Did you see more than one stack of trees</p> <p>17 that day?</p> <p>18 A. No.</p> <p>19 Q. In that stack of trees, is there any way</p> <p>20 possible there was 150 trees in that stack?</p> <p>21 A. No.</p> <p>22 Q. Now, you were there cleaning out this</p> <p>23 drainage ditch with a ditching bucket? It would</p> <p>24 have been a ditching bucket on your machine?</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Typically we would have two buckets, yes.</p> <p>2 Q. But you wouldn't have known because you</p> <p>3 weren't there?</p> <p>4 A. I wouldn't have known it because I wasn't</p> <p>5 there.</p> <p>6 Q. Now, this -- we've talked a lot about this</p> <p>7 ditch that runs along the west side of the levee,</p> <p>8 and we're talking about where it comes through the</p> <p>9 Marlen property from the east to the west through</p> <p>10 the levee, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And the water comes through that ditch or</p> <p>13 through that pipe and then heads south, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And it heads south through -- can</p> <p>16 we call it a drainage ditch? Is it a ditch?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you testified that those</p> <p>19 ditches will over time get silt in them from the</p> <p>20 farm practices?</p> <p>21 A. Farming practices, just lack of</p> <p>22 maintenance, yes.</p> <p>23 Q. Corn stalk debris?</p> <p>24 A. Yes.</p>

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<p>1 Q. So cleaning that ditch out is a common 2 practice for drainage maintenance? 3 A. Yes. 4 Q. Now, this drainage ditch that we're 5 talking about, it has to end someplace, correct? 6 A. Yes. 7 Q. Where does it end here? 8 A. Kaskaskia River. 9 Q. And you testified 300 or 400 feet, you 10 believe, from the old concrete structure to the 11 river? 12 A. 300 or 400 feet from our -- where Rex last 13 did a scoop out of the ditch to the river. 14 Q. Okay. You said he went -- it was your 15 testimony that he went a little bit further south 16 than where the old structure to the best of your 17 recollection? 18 A. Right, to the best of my recollection. 19 Q. Okay. So would it be fair to say that for 20 someone to say you've widened it, deepened it, 21 et cetera, would have to be based upon how this was 22 originally constructed whenever it was constructed? 23 A. Yes. 24 Q. So when you clean out a ditch, unless you</p>	<p>1 saying, "We believe that's our ditch"; is that fair? 2 A. Yes. 3 Q. Okay. 4 A. I mean, the tube, the levee that's there 5 now that the water runs through is the levee 6 district's, so . . . 7 Q. That's a good point. I want to mention 8 that. 9 To your knowledge -- and, again, we only 10 want your knowledge -- the levee -- how tall is that 11 levee? 12 A. That levee is 15 or so feet tall probably. 13 Q. Okay. And as you sit here today, that 14 levee -- everything you know to be true is actually 15 the levee district's? 16 A. Yes. 17 Q. Okay. And the drainage ditch that's to 18 the west of it that we've been talking about running 19 south of the pike all the way to the Kaskaskia, as 20 you sit here today, rightfully or wrongfully, you 21 believe it's part of the levee district's drainage 22 apparatus? 23 A. Yes. 24 Q. Now, you -- strike that.</p>
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<p>1 have knowledge of how it existed before it started 2 silting in, you wouldn't be able to say whether it 3 was increased in size or depth, et cetera; is that 4 fair? 5 A. That's fair, yes. 6 Q. As you sit here today, do you have any 7 facts available to yourself that would lead you to 8 believe that this ditch may not be in the levee 9 district? 10 A. No. 11 Q. Strike that. 12 This whole area that we're talking about, 13 to the best of your recollection, is in the levee 14 district, correct? 15 A. Yes. 16 Q. Okay. Would it be fair to say it's a 17 separate question of whether or not this ditch 18 itself is actually part of the levee district's 19 drainage apparatus, one they maintain? Is that a 20 separate question of whether the property is in the 21 drainage district or not? 22 A. Yes. 23 Q. And as you sit here today, your knowledge 24 is from some -- a board member of the levee district</p>	<p>1 You said that when you were there 2 with -- in 2022 with Mr. Lucas, that you were able 3 to visually see where Rex had stopped cleaning the 4 ditch? 5 A. Yes. 6 Q. Can you say, to the best of your 7 recollection, where he stopped, how deep was the 8 ditches compared to where it was still silted in as 9 it headed south, if you recall? 10 A. Immediately adjacent to where Rex stopped, 11 there was still some depth in the ditch. You had to 12 go another 100, 120 feet, and then all of a sudden, 13 it just kind of filled up, and everything just kind 14 of dispersed. There's a pond there it kind of runs 15 into and just brush everywhere. It's just clogged 16 up. 17 Q. So based upon your decades of experience, 18 would you have been led to believe at some point in 19 time in the past from the point that Rex stopped all 20 the way to the Kaskaskia was, in fact, cleared out 21 to where the water could freely flow? 22 A. Yes. 23 Q. But you didn't go that far, correct? 24 A. No.</p>

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<p>1 Q. Okay. As you sit here today, do you 2 believe that work needs to be done in order to get 3 the drainage on all of this property around this 4 area to be able to flow correctly? 5 A. Yes. 6 Q. Okay. So you said from where Rex had 7 stopped, that even if you continued to go a little 8 farther, there was still some semblance of a ditch? 9 Just the elevation was a little higher? 10 A. Possibly, a little. 11 Q. All right. And you saw some place in this 12 area where someone had been driving through with 13 some kind of side-by-sides or ATVs? 14 A. Yes. 15 Q. Okay. Now, would it be fair to say that 16 if the ditch -- where your staff had cleaned out the 17 ditch, but then where they'd stopped and we had this 18 other area, was it possible to cross where Rex had 19 done the cleaning out still? 20 A. No. 21 Q. Okay. So Mr. Lucas bringing up to you 22 that he couldn't -- he was having problems now 23 crossing -- 24 A. Yes.</p>	<p>1 BY MR. DEVORE 2 Q. Somebody crossed? 3 A. Somebody crossed. 4 Q. I think your testimony was you didn't 5 quibble about that because you just wanted to solve 6 what Mr. Lucas was calling an issue? 7 A. Yes. 8 Q. So the putting the pipe in, this area, 9 somewhere in that area -- I mean, to the best of 10 your recollection, that pipe is somewhere from where 11 Rex stopped between there and the Kaskaskia River? 12 A. No. It's to be from where Rex stopped, 13 get back north to where the structure was. 14 Q. Oh, that was your understanding at least? 15 A. Yes. 16 Q. It wasn't -- they weren't going to put it 17 south of where Rex stopped? They were going to come 18 back north someplace? 19 A. Yes. 20 Q. And prior to Rex doing this work, could 21 you tell about how much silt had been pulled out 22 where Rex had done the work to where he hadn't? How 23 far down, give or take? Could you even tell? 24 A. I mean, certain areas require more digging</p>
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<p>1 Q. -- how -- why did you believe that he 2 couldn't cross? I'm just curious. I'm trying to 3 visualize. He couldn't cross that area if you 4 hadn't excavated it out. Do you think he could 5 still cross there? 6 MR. ST. ONGE: Objection. Asked and 7 answered. 8 MR. DEVORE: I don't think I've asked 9 that question. 10 MR. ST. ONGE: He just said he 11 couldn't cross. 12 BY MR. DEVORE 13 Q. Go ahead. 14 A. Rephrase the question one more time. 15 Q. Okay. His -- your statement was that 16 Mr. Lucas said, "Because of the work that you have 17 done, I can't cross." 18 A. Correct. 19 Q. Okay. But you still saw an area somewhere 20 south of where Rex had stopped that he was crossing? 21 A. Someone had, yeah. 22 Q. Someone had? 23 MR. ST. ONGE: Objection. Calls for 24 speculation. Thank you.</p>	<p>1 because the way they get blocked up, but I mean, I 2 want to say probably 18 inches of material out of 3 the bottom, something to that . . . 4 Q. And you've cleaned out drainage district 5 ditches before, correct? 6 A. Yes. 7 Q. Okay. You've done that? 8 A. Yes. 9 Q. Okay. Have you ever cleared out a 10 drainage district ditch for them and then put a pipe 11 and a culvert in it so the people that owned the 12 property, subject to the drainage easement, could 13 get across the drainage levee's ditch? Have you 14 ever done that before? 15 A. No. 16 Q. To your knowledge and experience, is that 17 something that the levee district would even want? 18 A. No. 19 MR. ST. ONGE: Objection. Calls for 20 speculation. 21 MR. DEVORE: I don't know if he's 22 speculating. He's a 30-year expert. 23 BY MR. DEVORE 24 Q. Let me ask you this.</p>

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<p style="text-align: right;">Page 186</p> <p>1 Putting that in the way that it was put 2 in, could the levee district take the position that 3 that pipe and work, in and of itself, is impeding 4 their drainage district? Could they take that 5 position? 6 A. Yes. 7 MR. DEVORE: No further questions. 8 FURTHER EXAMINATION 9 BY MR. ST. ONGE 10 Q. I've got a few follow-ups for you. 11 You said just a minute ago that -- when 12 you were asked if you knew how much silt had been 13 taken out, you said you didn't know, but you thought 14 it might be, what, 18 inches? 15 A. Could possibly be. 16 Q. And you didn't measure that at all? 17 A. No. 18 Q. And you didn't have -- you had never seen 19 that ditch before except for 250 feet north? 20 A. Correct. 21 Q. Standing on the Marlen property? 22 A. Yes. 23 Q. You said part of the levee district's 24 drainage apparatus goes all the way to the river,</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. So the levee district owns that entire 2 ditch? Is that your testimony? 3 A. It's in the levee district. 4 Q. So it owns that ditch? 5 MR. DEVORE: You're misstating his 6 testimony. He said if, in fact, the levee district 7 does own -- 8 MR. ST. ONGE: Let him testify. 9 MR. DEVORE: Well, you're trying to 10 put words in his mouth, counsel. That's not what he 11 testified to. 12 MR. BLEYER: Calm down. She's got to 13 take everything down. It's easier for one person to 14 talk at a time. 15 MR. DEVORE: I agree. 16 My client is borderline getting 17 badgered here at this point. 18 Go ahead, Doug. 19 THE DEPONENT: I would assume beings 20 it's in a levee district, and it runs a long, deep 21 levee, that would be property -- or under the 22 jurisdiction of the levee district. 23 BY MR. ST. ONGE 24 Q. Does the public have free rein to clean</p>
<p style="text-align: right;">Page 187</p> <p>1 right? What is that based upon? 2 A. Ask me that again, please. 3 Q. Part of the levee district's drainage 4 apparatus your counsel asked you about, you said 5 that that goes all the way down to the Kaskaskia 6 River? 7 MR. DEVORE: Misstates prior 8 testimony. He said he believed it would likely go 9 that far. 10 MR. ST. ONGE: Okay. Well, he said 11 he did. That's my question. 12 BY MR. ST. ONGE 13 Q. You don't actually know if it goes all 14 that far? 15 A. I don't actually -- well, no, I don't, 16 but, I mean, it should because the ditch just cannot 17 stop. 18 Q. Okay, but what's that based upon? What is 19 it -- I mean, what is your basis for your belief 20 that the ditch -- that the district -- 21 A. My knowledge is that whenever you drain 22 water down a ditch, you just can't stop it with a 23 block wall. It's got to drain out to someplace, and 24 nature is the Kaskaskia River.</p>	<p style="text-align: right;">Page 189</p> <p>1 out any of the levee district's ditches wherever 2 they may happen to fall? 3 A. No. 4 Well, let me back up. If it's a 5 professional crew, I'm quite sure the levee district 6 wouldn't oppose it if they want to do it for no fee. 7 Q. So they just can go out there anytime they 8 want and just clear ditches for the levee district? 9 A. What my knowledge is that if there is some 10 property owners that have excavators 11 themselves -- farmers -- and there is a levee 12 district ditch that is stopped up and flowing, a 13 levee district will from time to time let them clean 14 that ditch out. 15 Q. What is that based upon? 16 MR. DEVORE: My client is not a 17 lawyer. He's trying to restate the drainage act, 18 counsel. 19 THE DEPONENT: I'm just saying that's 20 just common practice throughout the bottom, 21 everybody that owns the bottom ground. 22 BY MR. ST. ONGE 23 Q. And if those ditches happen to fall on 24 private property, it's okay for anybody that wants</p>

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<p style="text-align: right;">Page 190</p> <p>1 to go onto that private property and clear out the 2 ditch? Is that your testimony? 3 A. If it's -- I can't say that if it's not 4 their private property, no. 5 Q. If it's on other private property, the 6 public can just go on there to clear -- 7 MR. DEVORE: My client is not a 8 lawyer, counsel. You're trying to ask him to state 9 the law. Ask him a question of fact, please. 10 BY MR. ST. ONGE 11 Q. Go ahead. 12 A. Ask the -- 13 Q. To your understanding, the public can just 14 go onto a ditch that is maintained by a levee 15 district, even though it happens to be on other 16 private property, and clean out that ditch without 17 getting permission? 18 MR. DEVORE: Before you answer that, 19 Doug, I'm going to say that our affirmative defense 20 clearly states out what he believes to be a legal 21 justification for him having and going and done that 22 if, in fact, it is in the levee district. 23 MR. BIERMAN: Exactly, which is why 24 this is a perfectly reasonable line of inquiry</p>	<p style="text-align: right;">Page 192</p> <p>1 not app, but a computer program. I measured it from 2 the supposed line on the program down to the bottom 3 of where Rex quit was 85 feet. So somewhere in 4 between that property line and that 85 feet where 5 Rex quit, there was a structure in there. 6 Q. That's 85 feet from what line to what 7 line? Sorry. 8 A. From the property line on the app on the 9 computer, they've got a tool where you can measure. 10 Q. Okay. So it's 55 feet from the 11 Marlen-Lucas border down to where he stopped? 12 A. 85. 13 Q. 85? Sorry. I need to get clarity on 14 that. 15 A. 85 is what I measured off of the farm app. 16 Q. And how did you know where he stopped? 17 A. They've got lines drawn on there, 85 feet 18 from the border to where Rex stopped. The concrete 19 structure was somewhere in between that point and 20 the property line. 21 Q. So he cleared 85 feet worth of ditch? 22 A. Yes. 23 Q. Did you -- do you have any documents to 24 show the measurement that you did?</p>
<p style="text-align: right;">Page 191</p> <p>1 because he has taken this position, this legal 2 position. 3 MR. DEVORE: Okay. 4 MR. BIERMAN: So let's hear about it. 5 MR. DEVORE: If he understands that 6 that's what the law says, that's all he can say. He 7 can't articulate to you some prose like he's an 8 attorney. 9 MR. ST. ONGE: That's good advice for 10 your witness, but I'd like to hear his answer. 11 THE DEPONENT: John Q. Public, if 12 they have no expertise, no machines, can't 13 technically go on somebody else's property. 14 BY MR. ST. ONGE 15 Q. Even if they have the experience, they 16 can't -- 17 A. Even if they have the experience -- in the 18 levee district situation, I can't answer to that. 19 Q. Okay. And you said that the -- when your 20 lawyer was questioning you, you said that Rex had 21 cleared out a little bit beyond the structure. Now, 22 I'm trying to quantify. You said earlier that it 23 was about 50 feet worth. 24 A. I'm guesstimating. So I took an app -- or</p>	<p style="text-align: right;">Page 193</p> <p>1 A. It's on the computer. 2 Q. Did you make a report of it, print it out? 3 A. No. 4 Q. Did you do it again? 5 A. Yeah. 6 Q. Okay. You said that there's no way there 7 was 150 trees on that property, but you didn't count 8 them, correct, the ones that were lined up? 9 A. In the 150 trees in the pile? 10 Q. Yes. 11 A. No. There's no way there was 150 trees in 12 that pile. 13 Q. Did you bother to try to count how many 14 trees were in that pile at any point? 15 A. No, I did not. 16 Q. The 85 feet, is that as the crow flies or 17 along the ditch? 18 A. That was taking the mouse on the computer, 19 dotting the location on the property line and 20 bringing it straight south down the ditch to where 21 Rex had cleared. 22 Q. Straight south or along the ditch? Same 23 thing? 24 A. Yeah.</p>

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<p>1 Q. Okay.</p> <p>2 A. It's down -- down the work that he did.</p> <p>3 Q. You traced along the ditch line?</p> <p>4 A. Down the middle of the ditch.</p> <p>5 Q. And that's an app from an aerial shot</p> <p>6 above?</p> <p>7 A. Right. Now, whether those property lines</p> <p>8 are accurate off of that app, I don't know.</p> <p>9 Q. Well, there's tree covering, too, right?</p> <p>10 A. Not in that, no. Across there, that was</p> <p>11 kind of an open area where trees had been cleared.</p> <p>12 There's a new image after this work had been done.</p> <p>13 Q. So there's no interference from the trees?</p> <p>14 You can actually see the entire ditch on that app?</p> <p>15 A. Pretty much, yes.</p> <p>16 Q. What's the app called?</p> <p>17 A. MyGIS.</p> <p>18 Q. MyGIS?</p> <p>19 A. MyGISOnline. MyGISOnline, all together.</p> <p>20 MR. BLEYER: Do you have to go to</p> <p>21 Fayette County?</p> <p>22 MR. DEVORE: It's got all the</p> <p>23 counties listed on MyGIS.</p> <p>24 MR. BLEYER: Then you go . . .</p>	<p>1 Q. And he didn't make any objection to that</p> <p>2 at all, did he?</p> <p>3 A. No.</p> <p>4 Q. When you were being questioned earlier,</p> <p>5 you mentioned that the trees that were moved, you</p> <p>6 said that they were in the ditch; is that right?</p> <p>7 A. There was trees in the ditch, on the banks</p> <p>8 of the ditch, and trees in the way -- to get the</p> <p>9 machine to do the process, it had to come out.</p> <p>10 Q. So they were not all in the ditch? There</p> <p>11 was some outside the ditch?</p> <p>12 A. There was some outside the ditch.</p> <p>13 Q. When Barry and Rex told you that they had</p> <p>14 to bolt these tubes together and pour concrete on</p> <p>15 it, does that sound like what you instructed them to</p> <p>16 do?</p> <p>17 A. Yeah. I mean, they took pipes from my</p> <p>18 yard, and they put them in there, and they said</p> <p>19 there was some damage on one of them.</p> <p>20 And Barry said, "I took it that we're</p> <p>21 going to keep these together, so I bolted it</p> <p>22 together with bolts."</p> <p>23 And he said he even went to -- I believe</p> <p>24 to Rural King, got a bag of Quikrete concrete, and</p>
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<p>1 BY MR. ST. ONGE</p> <p>2 Q. So when you met with Joe and Nate, they</p> <p>3 told you that whatever you think you need to do in</p> <p>4 order to clear that area --</p> <p>5 A. Jim and Nate.</p> <p>6 Q. Jim and Nate. I apologize.</p> <p>7 When you met with Jim and Nate, they said,</p> <p>8 "Whatever you think you need to do to clear that</p> <p>9 area, do it."</p> <p>10 MR. HASENSTAB: Objection. Misstates</p> <p>11 his testimony. He didn't say they said it, that</p> <p>12 they told him that.</p> <p>13 MR. ST. ONGE: Okay.</p> <p>14 THE DEPONENT: Right.</p> <p>15 MR. HASENSTAB: He said Jim said it.</p> <p>16 BY MR. ST. ONGE</p> <p>17 Q. Jim told you whatever you need to do, you</p> <p>18 can do it?</p> <p>19 A. Upon my recommendation to Jim that that</p> <p>20 structure needs to come out, Jim says, "If that's</p> <p>21 what you think needs to happen, do it."</p> <p>22 Q. And, again, Nate was right there with his</p> <p>23 father at this point?</p> <p>24 A. Yes, sir.</p>	<p>1 poured over the top of it.</p> <p>2 Q. So he got a single bag of Quikrete to pour</p> <p>3 over --</p> <p>4 A. To try to lock two pieces together.</p> <p>5 Q. -- the seam?</p> <p>6 And, again, there's no way to check -- for</p> <p>7 you to check to see if that's correct?</p> <p>8 A. Other than dig it up.</p> <p>9 Q. Which you never did?</p> <p>10 A. I never did.</p> <p>11 Q. You said that the area from where Rex</p> <p>12 stopped clearing out was about 300 to 400 feet from</p> <p>13 the Kaskaskia?</p> <p>14 A. To my knowledge, yes.</p> <p>15 Q. Was that just eyeballing it? You didn't</p> <p>16 take a measuring tape?</p> <p>17 A. I didn't take a measuring tape.</p> <p>18 Q. You didn't walk it?</p> <p>19 A. No.</p> <p>20 Q. You said that no one has ever said that</p> <p>21 Blankenship created a new ditch on the property?</p> <p>22 You never heard that before?</p> <p>23 A. No.</p> <p>24 Q. Well, this lawsuit is the first time you</p>

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<p>1 heard that?</p> <p>2 A. Yes.</p> <p>3 Q. And you said earlier that Blankenship did</p> <p>4 not make a new ditch on the property?</p> <p>5 A. Not to my knowledge. They was not</p> <p>6 instructed to do so.</p> <p>7 Q. Right. And you haven't been out there to</p> <p>8 confirm whether that's the case?</p> <p>9 A. No.</p> <p>10 MR. ST. ONGE: That's all I have.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MR. BLEYER</p> <p>13 Q. Just a couple of follow-up questions.</p> <p>14 On the ditch on the Lucas property, is</p> <p>15 there flat ground between the east ditch line and</p> <p>16 the levee, or does the ditch just start at the</p> <p>17 bottom of the levee?</p> <p>18 A. No. There's some -- there's some ground</p> <p>19 between the edge of the ditch and the bottom of the</p> <p>20 levee.</p> <p>21 Q. Okay. And then on the west side of this</p> <p>22 ditch on the Lucas property, how wide did you have</p> <p>23 to clean to get your excavator down the side of the</p> <p>24 west side of the ditch?</p>	<p>1 Q. And you talked to counsel about MyGIS and</p> <p>2 a map that you had pulled up of this property; is</p> <p>3 that fair?</p> <p>4 A. Yes.</p> <p>5 Q. Does this appear to be it?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And getting your bearings on that,</p> <p>8 that red line, I'm going to mark north being at the</p> <p>9 top.</p> <p>10 That red line that runs from the left to</p> <p>11 the right, does that -- again, based upon at least</p> <p>12 this mapping system -- appear to be the approximate</p> <p>13 line where Mr. Marlen's property is to the north and</p> <p>14 Mr. Lucas to the south?</p> <p>15 A. Yes.</p> <p>16 Q. Now, if we look at that line that's</p> <p>17 diagonal -- if we look at the line that's diagonal</p> <p>18 on the right-hand side, that runs southeast</p> <p>19 diagonally. Does that appear to maybe be the east</p> <p>20 border of Mr. Lucas's property?</p> <p>21 A. I would assume so.</p> <p>22 Q. Okay. So if we now -- in this picture,</p> <p>23 two-thirds of the way from the left, there seems to</p> <p>24 be a big, muddy area. Do you see that? Do you want</p>
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<p>1 A. 50, 60 feet.</p> <p>2 Q. Okay. And then do you know how wide that</p> <p>3 flat land is between the east side of the ditch and</p> <p>4 the levee?</p> <p>5 A. No. I don't know, no.</p> <p>6 Q. Did you clean any of that off, or is it --</p> <p>7 A. No. We was only on the west side of the</p> <p>8 ditch.</p> <p>9 Q. This levee on the Lucas property there,</p> <p>10 are there any trees or growth on the levee other</p> <p>11 than grass?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 A. Just grass.</p> <p>15 MR. BLEYER: Thank you.</p> <p>16 MR. DEVORE: Can I get a sticker,</p> <p>17 please? I'll make this record a little clearer.</p> <p>18 (Exhibit 10 was marked for</p> <p>19 identification.)</p> <p>20 FURTHER EXAMINATION</p> <p>21 BY MR. DEVORE</p> <p>22 Q. Doug, take a look at this briefly. Let me</p> <p>23 know when you're ready, sir. Are you ready?</p> <p>24 A. Yes.</p>	<p>1 to draw a line -- dash a line down through what</p> <p>2 we're talking about here?</p> <p>3 A. [Deponent indicated.]</p> <p>4 Q. I mean, whatever that is. We've marked it</p> <p>5 here with a hyphenated line, right?</p> <p>6 MR. ST. ONGE: What are you saying</p> <p>7 that is?</p> <p>8 MR. DEVORE: I'm getting ready to --</p> <p>9 MR. ST. ONGE: Okay.</p> <p>10 BY MR. DEVORE</p> <p>11 Q. Does that appear to be you -- the dotted</p> <p>12 line -- Mr. Blankenship, approximately the center of</p> <p>13 this drainage ditch?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, that drainage ditch runs to</p> <p>16 the north up along the west side of the levee until</p> <p>17 we get to the pipe that comes through the levee; is</p> <p>18 that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, it appears where your dashed</p> <p>21 line is, we go south -- we're headed south towards</p> <p>22 Kaskaskia; is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. And does it appear there that the ditch</p>

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<p>1 stops, and then we have trees, et cetera, going 2 further south? Is that a fair representation of 3 what's going on there? 4 A. Yes. 5 Q. Is that area, to the best of your 6 recollection, where the mud/water cleared area 7 stops, is that where Rex quit digging? 8 A. Yes. 9 MR. ST. ONGE: Can you mark that? 10 MR. DEVORE: Yeah. 11 BY MR. DEVORE 12 Q. Can you draw a line across where your -- 13 A. [Deponent indicated.] 14 Q. And your testimony is, is that then the 15 crossing is somewhere to the north of that line you 16 just drew representing where Rex quit digging to the 17 best of your recollection? 18 A. To the best of my recollection. 19 Q. But you haven't been there? 20 A. I have not been there. 21 Q. So what happens to the water as it comes 22 south through this ditch, and it hits where Rex 23 stopped digging? 24 A. Where Rex stops digging?</p>	<p>1 Q. Based on your experience, is that what 2 you'd expect to happen here? 3 A. Yes. 4 Q. Now, if that ditch was cleaned out from 5 there all the way to Kaskaskia, the water would just 6 travel freely to the Kaskaskia River? 7 A. Yes. 8 Q. In your professional opinion, is that what 9 needs to happen here? 10 A. Yes. 11 Q. And as you sit here today, this area that 12 we're calling the center of the drainage ditch, do 13 you believe, as you sit here today, that that is 14 something under the control of the levee district? 15 I'm not saying you know. Do you believe it is? 16 A. I would believe. 17 MR. ST. ONGE: Objection. Calls for 18 speculation. 19 MR. DEVORE: I've asked it that way. 20 Okay. 21 BY MR. DEVORE 22 Q. Now, if we look at this picture, there are 23 a couple of things I want to point out. 24 Do you see -- as we've called the end of</p>
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<p>1 Q. Yeah. What happens to it then? 2 A. It actually swells up out of what -- well, 3 it just sprawls out all over the woodlands. 4 Q. Okay. 5 A. And runs off into a pond. 6 Q. So it's hitting however -- however -- and, 7 again, this is what they're going to say. You've 8 never seen it happen. I'm not asking you what 9 you've seen here. I'm asking you, based on three 10 decades of cleaning drainage ditches, what you see 11 in this picture, okay? 12 A. Right. 13 Q. So the water, as it comes down this 14 drainage ditch, it hits where it's no longer been 15 cleaned out, correct? 16 A. Correct. 17 Q. And when water hits there, will it -- 18 A. Slows down. 19 Q. -- just slowly fill up and until it hits 20 the top? 21 A. Yes. 22 Q. And then it will just disperse across the 23 property? 24 A. Yes.</p>	<p>1 the digging out of Rex, do you see that? 2 A. Yes. 3 Q. Go north just a little bit, and it looks 4 like off to the west, there's a little jog out of 5 the muddy/sloughy area. Do you see that? 6 A. Yes. 7 Q. Do you believe that's approximately where 8 the concrete structure was at? Do you know? 9 A. It could be, yes. 10 Q. Well, can you -- based on, again, 11 experience only, have any appreciation of why there 12 might be that little area there that's -- 13 MR. ST. ONGE: Objection. That calls 14 for speculation. 15 MR. DEVORE: Again, counsel, I know 16 he's speculating. That's why I'm asking him clearly 17 not to state a fact here. 18 BY MR. DEVORE 19 Q. Do you -- any appreciation based on your 20 experience what it might be? If you don't, that's 21 okay. 22 A. It could be the fact that could be where 23 the structure was at. I'm assuming that my guys 24 would have took the structure out and made the ditch</p>

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<p style="text-align: right;">Page 206</p> <p>1 nice and uniform. What that could be is that could</p> <p>2 be water coming down here and coming around through</p> <p>3 here and then possibly finding a way into that new</p> <p>4 ditch, and that could be an erosion.</p> <p>5 Q. Okay. Now, if we go up a little further</p> <p>6 to the west, does that appear to be a brush pile to</p> <p>7 you?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you believe that was the brush</p> <p>10 pile that eventually got drug over to Marlen to the</p> <p>11 best of your understanding?</p> <p>12 A. Yes, yes.</p> <p>13 Q. So from your understanding, where would</p> <p>14 Rex have come into this property as he worked that</p> <p>15 drainage ditch from the culvert way to the north,</p> <p>16 south? Where would the machine have physically been</p> <p>17 working that property before it even gets to Lucas,</p> <p>18 again, based on your experience of cleaning ditches?</p> <p>19 A. Just like that, right down along the west</p> <p>20 edge of the ditch.</p> <p>21 Q. So if he's on the west edge of the ditch,</p> <p>22 there would be -- how wide is a 323 Cat track</p> <p>23 machine?</p> <p>24 A. About 11 1/2 foot wide.</p>	<p style="text-align: right;">Page 208</p> <p>1 this process removed trees worth hundreds of</p> <p>2 thousands of dollars? Did he ever say that to you?</p> <p>3 A. No.</p> <p>4 Q. Besides the concern about being able to</p> <p>5 cross, did he raise any other concerns to you</p> <p>6 beyond: "You were on my property"?</p> <p>7 A. On the property, unable to cross, and this</p> <p>8 was still roughed up where we had put the spoil</p> <p>9 dirt, and I agreed that it was.</p> <p>10 Q. So you didn't smooth out the dirt?</p> <p>11 A. I didn't smooth out the dirt.</p> <p>12 Q. So you didn't smooth out the dirt well</p> <p>13 enough for his satisfaction?</p> <p>14 A. Correct.</p> <p>15 Q. He couldn't cross the ditch?</p> <p>16 A. Correct.</p> <p>17 Q. And you just generally were on his</p> <p>18 property without his permission?</p> <p>19 A. Yes.</p> <p>20 Q. Those were his concerns?</p> <p>21 A. Yes.</p> <p>22 Q. Nothing about trees?</p> <p>23 A. No.</p> <p>24 Q. After you -- you were -- you believed that</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. So he would have needed a 12-foot wide</p> <p>2 path along the west of the ditch to do his work?</p> <p>3 A. That's if he just drove straight. To</p> <p>4 operate and move and swing --</p> <p>5 Q. Yes.</p> <p>6 A. -- you've got to have at least double, if</p> <p>7 not triple, that.</p> <p>8 Q. Okay. Fair enough.</p> <p>9 Did you walk that area when you were there</p> <p>10 in 2022?</p> <p>11 A. When I was with Joe?</p> <p>12 Q. Yes.</p> <p>13 A. We walked up to this point. I believe we</p> <p>14 didn't cross the ditch. We walked it to about where</p> <p>15 Rex ended his excavation on the east side.</p> <p>16 Q. So you were on the east side where the</p> <p>17 excavation ended. You didn't go all the way up to</p> <p>18 where the potential property line was at that day?</p> <p>19 A. No.</p> <p>20 Q. All right. When you met with</p> <p>21 Mr. Lucas -- I've got to ask you this question. I'm</p> <p>22 just curious.</p> <p>23 Did -- anytime when he was raising his</p> <p>24 concerns to you, did he ever say that you have in</p>	<p style="text-align: right;">Page 209</p> <p>1 your staff had done what you and Mr. Lucas</p> <p>2 discussed, right?</p> <p>3 A. Mm-hmm.</p> <p>4 Q. That would have been sometime early 2022?</p> <p>5 A. That would have been -- when the work was</p> <p>6 performed?</p> <p>7 Q. Yes, to the best of your --</p> <p>8 A. That would have been in '21.</p> <p>9 Q. You met with him in the spring of '22 when</p> <p>10 you did the remediation?</p> <p>11 A. Right.</p> <p>12 Q. Approximately when was that?</p> <p>13 A. Oh, the remediation?</p> <p>14 Q. Yes, sir.</p> <p>15 A. That would have been in '22. That would</p> <p>16 have been probably April area, May, April.</p> <p>17 Q. Okay. And at some point in time, your</p> <p>18 staff said, "We took care of it"?</p> <p>19 A. Yes.</p> <p>20 Q. After that time until the time you got</p> <p>21 this lawsuit, did you ever hear one thing from</p> <p>22 Mr. Lucas about anything?</p> <p>23 A. No.</p> <p>24 MR. DEVORE: No further questions.</p>

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<p style="text-align: right;">Page 210</p> <p>1 FURTHER EXAMINATION</p> <p>2 BY MR. ST. ONGE</p> <p>3 Q. Do you have any idea when this aerial</p> <p>4 photograph in Exhibit 10 was taken?</p> <p>5 A. I tried to look on the -- on the program,</p> <p>6 and it didn't offer up a date.</p> <p>7 Q. Okay. So you don't know?</p> <p>8 A. No.</p> <p>9 Q. Okay. And you said that based upon three</p> <p>10 decades of cleaning ditches, you can tell how the</p> <p>11 water is going to disperse on this property?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. But you've never actually seen how</p> <p>14 the water is dispersed on this property, right?</p> <p>15 A. No. I've not actually sat there and</p> <p>16 looked at it, no.</p> <p>17 Q. Okay. And do you know whether this ditch</p> <p>18 ultimately runs into a pond that is on Joe Lucas's</p> <p>19 property?</p> <p>20 A. Yes.</p> <p>21 Q. You said that at no point when you met</p> <p>22 with Joe, did he mention anything about trees; is</p> <p>23 that true?</p> <p>24 A. Other than the fact that "You piled trees</p>	<p style="text-align: right;">Page 212</p> <p>1 MR. DEVORE: I'm comfortable with</p> <p>2 whatever it takes.</p> <p>3 MR. BLEYER: You're going to be gone</p> <p>4 tomorrow, right?</p> <p>5 MR. HASENSTAB: I'll be here.</p> <p>6 MR. BLEYER: Whenever I sent out that</p> <p>7 AT&T number, would that be an easier way to get all</p> <p>8 of us on the line to pick a new date?</p> <p>9 MR. BIERMAN: Of course.</p> <p>10 But the fact is, we're agreeing that</p> <p>11 we're going to endeavor to complete these</p> <p>12 depositions by the end of September.</p> <p>13 MR. BLEYER: Yes. I'm sorry.</p> <p>14 MR. HASENSTAB: We'll endeavor to do</p> <p>15 it, yeah.</p> <p>16 MR. DEVORE: Mr. Blankenship and his</p> <p>17 lawyer are not going to hold anybody to that date if</p> <p>18 something happens, but we will try to get it done by</p> <p>19 that time.</p> <p>20 THE REPORTER: Would you like a copy?</p> <p>21 MR. BLEYER: An E-tran only. Dan</p> <p>22 will order it.</p> <p>23 MR. DEVORE: E-tran with exhibits.</p> <p>24 MR. ST. ONGE: E-tran with exhibits</p>
<p style="text-align: right;">Page 211</p> <p>1 on me."</p> <p>2 Q. Okay. So he complained about the trees</p> <p>3 being piled on his property?</p> <p>4 A. Yes.</p> <p>5 MR. ST. ONGE: All right. That's all</p> <p>6 I have.</p> <p>7 MR. BLEYER: I have nothing further.</p> <p>8 Do you waive?</p> <p>9 MR. DEVORE: Yes.</p> <p>10 (Lunch break.)</p> <p>11 MR. BIERMAN: So it's my</p> <p>12 understanding that we have a deadline, which is</p> <p>13 tomorrow, by which we have to take the parties'</p> <p>14 depositions in this case.</p> <p>15 Because of time constraints and</p> <p>16 scheduling issues today, we have agreed between all</p> <p>17 three parties present that we are going to extend</p> <p>18 that deadline by agreement and that we should be</p> <p>19 able to -- we will endeavor our best to complete</p> <p>20 these depositions by the end of September?</p> <p>21 MR. DEVORE: I'm confident that</p> <p>22 everybody will agree to that.</p> <p>23 MR. BIERMAN: Does everybody agree to</p> <p>24 that?</p>	<p style="text-align: right;">Page 213</p> <p>1 for me.</p> <p>2 MR. BLEYER: Exhibits with</p> <p>3 hyperlinks.</p> <p>4</p> <p>5 (Deposition ended 1:50 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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CERTIFICATE OF REPORTER

I, Ann Marie Hollo, Certified
Shorthand Reporter, Registered Diplomat Reporter,
and Certified Realtime Reporter, within and for the
State of Illinois, do hereby certify that the
witness whose testimony appears in the foregoing
deposition was duly sworn by me; the testimony of
said witness was taken by me to the best of my
ability and thereafter reduced to typewriting under
my direction; that I am neither counsel for, related
to, nor employed by any of the parties to the action
in which this deposition was taken, and further that
I am not a relative or employee of any attorney or
counsel employed by the parties thereto, nor
financially or otherwise interested in the outcome
of the action.

Dated this 6th day of September,
2023.

Ann Marie Hollo
Certified Shorthand Reporter
State of Illinois

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